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DATABASE UNTIL 11.00 AM ON THURSDAY 25 OCTOBER 2018**

**IN THE HIGH COURT OF NEW ZEALAND  
AUCKLAND REGISTRY**

**I TE KŌTI MATUA O AOTEAROA  
TĀMAKI MAKAURAU ROHE**

**CIV-2015-404-1923  
[2018] NZHC 2712**

IN THE MATTER	of the Defamation Act 1992
BETWEEN	COLIN GRAEME CRAIG Plaintiff
AND	CAMERON JOHN SLATER First Defendant
AND	SOCIAL MEDIA CONSULTANTS LIMITED Second Defendant

Hearing: 8–12, 15–19, 22–26, 29, 31 May and 1 June 2017  
Further submissions received 2, 7 and 12 June, 13,  
20 September 2017, 6, 29 March, 12, 30 April, 10, 16 August,  
5, 11 September 2018

Appearances: CG Craig, representing himself, support by TF Cleary as  
McKenzie Friend  
BP Henry and CSL Foster for the Defendant

Judgment: 19 October 2018

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**JUDGMENT OF TOOGOOD J**

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*This judgment was delivered by me on 19 October 2018 at 3.00 pm  
Pursuant to Rule 11.5 High Court Rules*

*Registrar/Deputy Registrar*

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## **THE NATURE OF THE CASE**

### **Introduction**

[1] This defamation proceeding has its origins in the political rise and fall of Mr Colin Craig, an Auckland accountant and businessman, who founded and led the Conservative Party of New Zealand between 2011 and June 2015.

[2] On 18 September 2014, only two days before that year's general election, Mr Craig's press secretary, Ms Rachel MacGregor, resigned abruptly. As might have been expected, the resignation of a close adviser to the leader of a political party only two days before an election excited a great deal of news media interest. Public opinion polls conducted in the lead-up to the election suggested the Conservative Party was well supported, but it failed two days later to secure a sufficient number of the Party votes cast under the mixed member proportional voting system to reach the five per cent threshold which would have entitled it to seats in the House of Representatives.

[3] On the day she resigned, Ms MacGregor filed an online complaint with the Human Rights Commission under the Human Rights Act 1993, alleging that she had been sexually harassed by Mr Craig. The complaint was not made public at that stage and Mr Craig did not learn of its existence until late January 2015. Ms MacGregor did tell Mr Craig, however, that she required him to arrange payment of contract fees she had not then invoiced for work she had undertaken on behalf of Mr Craig and the Conservative Party over the previous four months. The other financial matter requiring resolution was an outstanding loan of around \$19,000 advanced to Ms MacGregor by Mr Craig and his wife Helen in February 2014. Although Mr Craig and Ms MacGregor agreed to meet in the future to resolve these matters, they had not done so by the end of 2014.

[4] In late November 2014, Ms MacGregor consulted a friend, Mr Jordan Williams, a lawyer and executive director of the Taxpayers Union who was then a supporter of the Conservative Party and its policies. She told Mr Williams about Mr Craig's conduct towards her during the more than three years she had worked for him. Among other things, Ms MacGregor referred to an incident on the night of the general election on 26 November 2011. She said Mr Craig and she had gone upstairs

to the apartment at the Conservative Party offices together, after the election results were announced, and that there had been intimate touching but that they did not have sexual intercourse on that or any other occasion. Ms MacGregor gave Mr Williams copies of letters and cards sent or given to her by Mr Craig and referred to text messages he had sent to her. The communications, she said, demonstrated that Mr Craig had an inappropriate romantic and sexual attraction to her which was not reciprocated. It had caused her distress and contributed to her resignation. She told Mr Williams that she was interested in a monetary settlement and an apology from Mr Craig. Ms MacGregor also told Mr Williams that she had not been paid between May and September that year, and that she and Mr Craig had disagreed about the appropriate pay rate for her services during the election campaign. Mr Williams provided Ms MacGregor with advice about how to pursue her claims.

[5] On 29 January 2015, Ms MacGregor sent Mr Craig details of her pay claim. She also told Mr Craig that she had made a sexual harassment complaint to the Human Rights Commission the previous year and that her claim against him would be significant. In May 2015, in a mediation arranged by the Commission, Ms MacGregor and Mr Craig reached a settlement on terms which resolved Ms MacGregor's pay claim by a payment of \$16,000; the forgiveness of the \$18,900 debt and the withdrawal of Ms MacGregor's sexual harassment complaint. The agreement was expressed to be private and confidential and it was agreed that both Ms MacGregor and Mr Craig would confine any statements to the media or third parties to a declaration that they had met and resolved their differences.

[6] In the meantime, disaffected members of the Conservative Party board and other supporters attributed the Party's failure at the 2014 election partly to public speculation about the reasons for Ms MacGregor's sudden resignation and partly to Mr Craig's poor performance as Party leader. Amid an internal dispute about the alleged misconduct of a board member,<sup>1</sup> another board member, Mr John Stringer, leaked to the publishers of an internet blog site known as "Whale Oil Beef Hooked" (Whaleoil) information about Mr Craig and the Party's internal problems; electoral funding and the Party's finances; and a rumoured sexual harassment claim by

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<sup>1</sup> Mr Larry Baldock.



Ms MacGregor. The Whaleoil blog is managed and edited by Mr Cameron Slater, a journalist and political commentator, and a deputy editor, Mr Pete Belt. Whaleoil is Mr Slater's primary outlet for expressing his views on matters he considers newsworthy. Relying on the leaked information, Mr Slater and his company published statements on Whaleoil criticising Mr Craig. Mr Craig believed Ms MacGregor was responsible for leaking information about their confidential settlement to news media representatives.

[7] Further media speculation about the circumstances of Ms MacGregor's resignation was fuelled by remarks Mr Craig made in a televised interview on 9 June 2015, conducted in a sauna, in which he implied that Ms MacGregor had resigned because she was unable to cope with the demands of her role as his press secretary. In a somewhat Shakespearean twist, Ms MacGregor told Mr Craig she considered him to have been responsible for leaking false information about the settlement to Mr Slater; she also complained that his statement in the sauna was contrary to the terms of the settlement agreement. She said it had caused her distress because Mr Craig's statement was contrary to what she had told prospective employers.

[8] Questioned about the allegations made on the Whaleoil blogsite by Mr Slater and on other news media, Mr Craig cited the confidentiality of the settlement as the reason he declined to say anything more publicly or to give more information to the Conservative Party board. Mr Craig's refusal to defend himself against the rumours of inappropriate sexual behaviour placed him under considerable political pressure within the Conservative Party and externally. He stepped down as leader on 19 June 2015. Later that day, on Whaleoil and in a broadcast radio interview, Mr Slater alleged, among other things, that Mr Craig had settled a sexual harassment claim by Ms MacGregor by paying her a six-figure sum and had lied to the Conservative Party board about the amount of the payment. Mr Slater made further allegations of a similar kind over the following month, including alleging that another person had also made a sexual harassment claim against Mr Craig.

[9] Ms MacGregor complained to the Human Rights Review Tribunal that Mr Craig had breached the terms of the settlement reached under the Human Rights Act. Ultimately, she succeeded in obtaining a substantial award of compensation.

[10] Mr Craig concluded that Mr Williams and Mr Stringer had conspired with Mr Slater to distribute untrue information about him; his relationship with Ms MacGregor; the terms of the settlement and his allegedly misleading the Conservative Party board about those matters. Following his resignation, he published a booklet entitled *Dirty Politics and Hidden Agendas* and circulated it to more than 1.6 million New Zealand homes, allegedly in defence of the attacks he claims Mr Slater and others made upon him. Mr Slater says he was defamed in the booklet.

### **The proceeding**

[11] Mr Craig now sues Mr Slater and Social Media Consultants Limited (SMCL), the company which publishes the Whaleoil blog, in defamation. In brief, Mr Craig alleges that he suffered serious damage to his reputation as a consequence of untrue statements published by Mr Slater and SMCL which carries the meanings or imputations that he:

- (a) sexually harassed Ms MacGregor;
- (b) sent her numerous "dirty" sexually explicit text messages which were unsolicited and a form of sexual harassment;
- (c) begged Ms MacGregor for an affair and then (when she resisted) put her under financial pressure to sleep with him;
- (d) engaged in behaviour with Ms MacGregor which was so morally reprehensible that the board of the Conservative Party had to put chaperones in place to protect her;
- (e) sexually harassed Ms MacGregor so seriously that he settled her sexual harassment claim by paying her a large sum of money running into six figures;
- (f) lied to the board of the Conservative Party by claiming that he had paid Ms MacGregor substantially less than six figures to settle her

employment claims when in fact he paid her a six-figure sum to settle her sexual harassment claim;

- (g) seriously sexually harassed a woman other than Ms MacGregor;
- (h) is a danger to women; and
- (i) tricked, misled and deceived the Conservative Party board in relation to loans and GST rebates.

Mr Craig alleges also that the defendants published untrue statements that meant:

- (j) there were reasonable grounds to suspect Mr Craig of being dishonest in filing his electoral returns and lying about the amounts spent on his electoral campaign and that Mr Craig's spending exceeded the legal limits;
- (k) Mr Craig pursued a relentless and driven witch-hunt against Larry Baldock who was sacked as a Conservative Party candidate and board member, and suspended from the party without any reasonable cause;
- (l) Mr Craig lied to the media about why Larry Baldock and Leighton Baker left the Conservative Party and its board;
- (m) Mr Craig initiated and arranged a loan to the Conservative Party at eight per cent interest as a personal money-making venture and manipulated support for it by seeking telephone support for it from carefully selected board members; and
- (n) Mr Craig abused his position of power as leader of the Conservative Party for personal financial gain.

[12] Mr Craig seeks declarations under s 24 of the Defamation Act that the defendants are liable to him in defamation. He also seeks general, aggravated and punitive damages of unspecified amounts and costs.

[13] In defence of these claims, the defendants plead that the allegations did not bear the defamatory meanings alleged or, alternatively, that they were either true statements of fact or expressions of honest opinion, and that the defendants are in any event protected from Mr Craig's claims by the defence of responsible communication on a matter of public interest.

[14] Mr Slater counterclaims in defamation for statements published by Mr Craig in the "Dirty Politics and Hidden Agendas" booklet. He pleads that the contents of the booklet defamed him by containing the imputations that he:

- (a) developed or coordinated the strategy to defame and spread lies about Mr Craig;
- (b) made up allegations relating to Mr Craig, including the creation of a second alleged victim of Mr Craig's sexual harassment;
- (c) made up material he published on his blog;
- (d) acted with ill will towards Mr Craig by gathering material Mr Slater knew was fake, or untrue, and publishing the same on his blog;
- (e) published material on his blog knowing it not to be true; and
- (f) is a compulsive liar.

[15] Mr Slater seeks general damages of \$8,117,010 on a proposed basis of \$5.00 for each of the 1,623,402 New Zealand homes to which the booklet was delivered.

[16] In defence of Mr Slater's claims, Mr Craig pleads that the allegedly defamatory meanings are either true statements of fact or expressions of honest opinion, and also that he was entitled to make the statements under the protection of the reply to attack qualified privilege.

## **SUMMARY OF THE FINDINGS AND DECISIONS**

### **Findings on Mr Craig's defamation claims**

[17] For the reasons set out below, I have found that:

- (a) It is not established that Mr Craig was guilty of sexual harassment of Ms MacGregor up to and including the incident on election night 2011 when there was intimacy between them, because I am not satisfied that Mr Craig's behaviour was unwanted by Ms MacGregor at that time.
- (b) It is true that Mr Craig was guilty of moderately serious sexual harassment of Ms MacGregor, on multiple occasions from early 2012 to 2014 by telling her that he remained romantically inclined and sexually attracted to her, and that those expressions of his views were not welcomed by Ms MacGregor at the time they were communicated to her. Ms MacGregor chose not to complain about the harassment because of her concern about the effect of a complaint on her employment.
- (c) The imputation that Mr Craig sent "dirty text messages" to Ms MacGregor is not strictly true, but it is materially true in substance in that he sexually harassed Ms MacGregor by communicating to her sexually oriented written messages between early 2012 and 2014 that were unwelcome.
- (d) The imputation that Mr Craig sexually harassed Ms MacGregor so seriously that he settled the sexual harassment claim by paying her a six-figure sum of money is not strictly true, but it is materially true in substance in that he provided Ms MacGregor with a substantial financial benefit in exchange for her agreeing she would not pursue a justifiable claim that Mr Craig had been guilty of moderately serious sexual harassment.

- (e) The imputation that Mr Craig lied to the board of the Conservative Party by claiming he had paid Ms MacGregor substantially less than six figures to settle the employment matters when in fact he paid her a six-figure sum to settle her sexual harassment claim is not strictly true. It is materially true in substance, however, in that Mr Craig misled the board intentionally about the true nature of his behaviour with and towards Ms MacGregor, the foundation and merits of Ms MacGregor's allegations against him, and the true nature of the settlement with her.
- (f) Although it is not true that Mr Craig "begged" Ms MacGregor for an affair, the imputation that he did that was materially true in substance in that he indicated to her that they could have an intimate physical relationship.
- (g) Mr Craig did not put Ms MacGregor under financial pressure to sleep with him.
- (h) The board of the Conservative Party did not put chaperones in place to protect Ms MacGregor because Mr Craig engaged in behaviour with her that was morally reprehensible.
- (i) It is not true, nor substantially true, that Mr Craig sexually harassed a woman other than Ms MacGregor.
- (j) Mr Craig did not use his resources to conduct a witch-hunt against Mr Larry Baldock and then unfairly sack him as a candidate and board member and suspend him from the Conservative Party.
- (k) The imputation that Mr Craig, in his capacity as the leader of a political party, had misled the news media on an internal disciplinary issue about Mr Baldock was not defamatory.
- (l) There was no evidence that there are reasonable grounds to suspect Mr Craig of being dishonest in filing his electoral returns and lying

about the amounts spent on his electoral campaign, or that Mr Craig's spending exceeded the legal limits.

- (m) There was no evidence that Mr Craig initiated and arranged a loan to the Conservative Party at eight per cent interest as a personal money-making venture and manipulated support for it by seeking telephone support for it from carefully selected board members.
- (n) There was no evidence that Mr Craig abused his position of power as leader of the Conservative Party for personal financial gain.

[18] I have held that Mr Slater and SMCL have no defence to two of the claims by Mr Craig that he was defamed by them. At the conclusion of this judgment, I make a declaration under s 24 of the Defamation Act 1992 that the defendants are liable to Mr Craig in defamation for the untrue statements that Mr Craig:

- (a) had placed Ms Rachel MacGregor under financial pressure to sleep with him; and
- (b) sexually harassed at least one victim other than Ms MacGregor.

[19] I have also held that the reputational damage which Mr Craig suffered throughout the events traversed at length in this judgment resulted almost entirely from his own actions. To the extent, if any, that his reputation suffered further damage because of the two defamatory statements for which I have held the defendants to be liable, I am more than satisfied that the declarations that he was defamed in that way provide adequate vindication. I conclude, therefore, that Mr Craig is not entitled to an award of general damages to compensate him further for such damage. Mr Craig's remaining causes of action and his claims for damages in defamation are dismissed.

#### **Findings on Mr Slater's counterclaim**

[20] On Mr Slater's counterclaim, I have held that I do not accept that:

- (a) Mr Slater spread lies about Mr Craig; or

- (b) made up allegations about him; or
- (c) gathered information that he knew was fake or untrue; or
- (d) published material on Whaleoil knowing it not to be true.

[21] I am satisfied Mr Slater is neither a compulsive nor a calculated liar.

[22] I have held, therefore, that Mr Craig's defence of truth to Mr Slater's counterclaim fails. I find, however, that although Mr Craig countered the Whaleoil publications which he considered to have defamed him by asserting in the *Dirty Politics and Hidden Agendas* booklet that there was a conspiracy between Mr Slater, Mr Williams and Mr Stringer to spread deliberate lies about him, his primary motive was to correct what he had maintained throughout were untrue statements. Because the core allegations about Mr Craig's relationship with Ms MacGregor and related matters had received widespread publication throughout New Zealand, I have found that Mr Craig's decision to distribute the booklet to every New Zealand household was a justifiable response. I find that the untrue statements in the *Dirty Politics and Hidden Agendas* booklet were made on an occasion of qualified privilege in reply to an attack on him by Mr Slater and that the privilege was not lost. On that basis, Mr Slater's counterclaim in defamation is dismissed.

### **Significant principles of law applied**

[23] To reach the conclusions on key issues I have been required to decide, I applied these significant principles of law to the facts I have found to be proved on a balance of probabilities:

- (a) For the purposes of this case –
  - (i) The ordinary and natural meaning of the term “sexual harassment” is intentional conduct or language of a sexual nature, in a workplace, professional or social setting, that is unwelcome, unwanted or offensive to the person who is subjected to it at the time it occurs.



- (ii) Conduct or language of a “sexual” nature is that which relates to, or tends towards, or involves sexual intercourse or other forms of intimate physical contact.
- (iii) Assertions that there was “harassment of a sexual nature” and that a person “sexually harassed” another have corresponding meanings.
- (iv) Where a sexual harassment complaint involves an allegation of intentional sexual conduct or language and there is a power imbalance favouring the perpetrator over the complainant, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not.
- (v) The inevitability of detriment to a person subjected to sexual harassment in a case involving a power imbalance justifies treating the imbalance as an aggravating factor in assessing the seriousness of the harassment.
- (vi) For a defendant in this case to succeed in the defence that the assertions that Mr Craig was guilty of sexual harassment were true, the defendant must prove each of the elements on a balance of probabilities.
- (vii) The defence of responsible communication on a matter of public interest described by the Court of Appeal in *Durie v Gardiner*<sup>2</sup> is applied to this case, in place of the defendants’ reliance on the *Lange v Atkinson* qualified privilege originally pleaded. For the purposes of that defence –
- (viii) The defence is available where the defendant (author or publisher) has made an untrue statement of fact which has

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<sup>2</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

damaged the reputation of the plaintiff. What would otherwise justify the granting of a remedy, including damages, is excused when the defence is applied to strike a just balance between the right to protection of reputation and the right to freedom of expression on a matter of public interest.

- (ix) The focus of the inquiry about whether the defence applies in any case is not on the motivation of the author or publisher seeking its protection but on the public interest in receiving information, responsibly communicated, weighed against the damage caused to the target's reputation by an untrue statement.
  - (x) The extension of the protection of the defence to unregulated bloggers and other commentators who are not bound by the standards of good journalism contained in the Broadcasting Act 1989 or the principles of the New Zealand Media Council means that the imposition of a responsibility requirement is highly desirable and a necessary safeguard for reputation and privacy rights.
  - (xi) There is no principled reason for holding that the law should impose on a blogger or commentator like Mr Slater a different standard for the responsible communication of facts from that which is applied to a national newspaper, radio station or television channel.
  - (xii) In determining whether the publication was "responsible", a court has regard to all relevant circumstances of the publication, including the matters referred to in *Durie v Gardiner*.<sup>3</sup>
- (b) Mr Slater held personal animosity towards Mr Craig, and knew and intended that his communications would have a damaging political outcome for him, but he was principally motivated to release into the

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<sup>3</sup> At [67].

public arena information which would inform public discussion on a matter of undoubted public interest. To hold that Mr Slater was deprived of the defence of responsible communication on a matter of public interest, merely because of his views about Mr Craig, would be to tilt the balance between freedom of expression on a matter of public interest and protection of reputation too far in favour of the latter. Such a finding would have an unduly chilling effect on political discourse of the kind which the public interest defence is designed to recognise.

### **THE BROAD SCOPE OF THE RELEVANT FACTS**

[24] To understand the allegations, the defences, and the determinations made in the judgment, it is regrettably necessary to appreciate the facts in greater detail than would have been necessary if the issues had been fewer and less complex. That is particularly the case in regard to the allegation that Mr Craig sexually harassed Ms MacGregor, a matter central to the proceeding on which Mr Craig and Ms MacGregor have starkly conflicting views. The nature of the relationship between Mr Craig and Ms MacGregor from time to time during the three years they worked together; the events following Ms MacGregor's resignation, including the settlement agreement, and Mr Craig's conduct towards Ms MacGregor throughout lie at the heart of the case. Since Mr Slater has pleaded that the statements he made about those matters are true, it is not possible to make the necessary findings of fact without undertaking a detailed factual enquiry, addressing not only what Mr Craig and Ms MacGregor said in evidence but also the documentary evidence of their communications by card, e-mailed letter and by text message.

[25] Mr Slater has also raised affirmative defences of honest opinion and responsible communication on a matter of public interest.<sup>4</sup> Consideration of those defences, especially the latter, calls for a careful analysis of how Mr Slater received information about the matters at issue; what steps, if any, he took to verify it; and what he knew or believed at the time of each publication. In resisting Mr Slater's

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<sup>4</sup> Originally pleaded as a defence relying on the qualified privilege identified by the Court of Appeal in *Lange v Atkinson* [1988] 3 NZLR 424 [*Lange (No 1)*] and *Lange v Atkinson* [2000] 3 NZLR 385 [*Lange (No 2)*], but replaced by the new defence of responsible communication on a matter of public interest recognised by the Court of Appeal in *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

counterclaim against him, Mr Craig pleads that the impugned statements were true, and relies also on the defences of honest opinion and “reply to attack” qualified privilege. It is necessary, therefore, to examine the circumstances in which the impugned statements were published. They include the political environment; the detail of Mr Craig’s responses – both public and private – to inquiries by members of the Conservative Party and news media representatives about his relationship with Ms MacGregor and how the issues between them were resolved; how Mr Slater obtained and handled the information on which he based his statements, and the circumstances in which the *Dirty Politics and Hidden Agendas* booklet was published.

### **The witnesses and their evidence**

#### *The witnesses*

[26] Mr Craig and Mr Slater gave evidence by written briefs and by supplementary oral evidence; they were cross-examined. Ms MacGregor was called to appear on behalf of Mr Slater, under subpoena. She was examined and cross-examined. A detailed letter dated 18 February 2015 from her solicitor, Mr Geoff Bevan of Gallaway Cook Allan, was produced as an exhibit (the Gallaway Cook Allan letter). Ms MacGregor said in evidence that the letter set out for her what she considered to be the language and behaviour that was the basis for the claim of sexual harassment she made against Mr Craig.<sup>5</sup> She adopted the contents of the Gallaway Cook Allan letter as her evidence. Ms MacGregor was taken to various passages in it during her evidence-in-chief, to confirm and explain the contents, and she was cross-examined on the contents by Mr Craig.

[27] On 13 March 2015, Mr Craig's solicitors, Chapman Tripp, sent Gallaway Cook Allan a detailed response to their letter (the Chapman Tripp letter). Mr Craig confirmed in evidence that the response set out accurately his view of the nature of his working and personal relationship with Ms MacGregor during the time she worked for him and that it provided his responses to Ms MacGregor’s detailed allegations. He was cross-examined on it. It is appropriate, therefore, to treat the contents of the

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<sup>5</sup> With one notable exception: a letter from Mr Craig to Ms MacGregor dated 7 February 2012.

Chapman Tripp letter as forming part of Mr Craig's evidence about the events covered, and allegations made, by Ms MacGregor through her solicitors.

[28] Other witnesses called in the case were:

- (a) Mrs Helen Craig;
- (b) Mr Laurence Day, a Conservative Party board member and donor;
- (c) Ms Beverly Adair-Beets and Ms Angela Storr, who were Conservative Party employees at relevant times;
- (d) Ms Hong-Shin (Tracy) Zhu and Mr Darren Reid who were either employed by or contracted to Centurion Management Services Limited at relevant times;
- (e) Ms Madeleine Flannagan, an Orewa solicitor who acted for Mr and Mrs Craig;
- (f) Mr Barry Soper and Mr Matthew Hooton, political commentators.

*Disclosure of relevant documents*

[29] In accordance with the rules of the Court, Mr Craig and Mr Slater were under mutual obligations to disclose to each other the documents that were or had been under their control and were relevant to the issues in the proceeding. Mr Craig was criticised by Mr Slater's counsel, Mr Henry, for failing to disclose all of the text messages he says he exchanged with Ms MacGregor, or for disclosing them too late in the course of the proceeding or the hearing. Mr Craig said that he had two cell phones during the time he worked with Ms MacGregor. He produced copies of screen shots he had taken from his phones, most of which showed Ms MacGregor's texts to him and only a few of which contained his text messages to her. Mr Henry argued that adverse inferences should be drawn against Mr Craig, where appropriate, on account of his failure to produce a complete record of any text message exchange. Mr Craig was also critical of what he alleged to be Mr Slater's deliberate destruction of, or at least failure to

produce, records of email communications between him and others, notably Mr Jordan Williams, or between Mr Belt and others. Mr Craig invited me to draw adverse inferences against Mr Slater on that account.

[30] I have not found it necessary to draw adverse inferences against either witness solely on the basis of their failure to produce relevant documents to the Court. Where a witness has been unable to produce corroborative evidence in support of a statement of fact which has been challenged, I have determined whether the fact has been proved by reference to the evidence produced at trial as a whole, applying the standard of probability which applies in civil proceedings. That means that in some cases I have simply found an allegation not to be proved to the required standard.

[31] As she is not a party to the proceeding, Ms MacGregor was not under any obligation to disclose all documents which might be relevant to the case. At Mr Slater's request, she produced certain specified documents which were in her possession or under her control. Ms MacGregor was not asked to produce copies of text messages recorded on or recovered from her smartphone and it seems she did not have any relevant texts between Mr Craig and her available for examination. Ms MacGregor had no control over the way in which her evidence was presented to the Court, because her evidence was elicited solely by questions from Mr Henry, Mr Craig and me. I have not drawn any unfavourable inference against Ms MacGregor on any matter because of her failure to refer to any corroborating document. Where I have doubted Ms MacGregor's evidence about statements alleged to have been made by Mr Craig in text messages, emails or in conversation with her, I have made appropriate allowances for the difficulties of her position.

[32] Unless otherwise indicated, the following are relevant facts I have found to be proved on a balance of probabilities. Some findings of fact are more fully or further discussed in other sections of the judgment.

## **MR CRAIG'S RELATIONSHIP WITH MS MacGREGOR**

### **About Mr Craig**

[33] Mr Craig and his wife, Helen, met at university and married shortly after graduating. In addition to conducting what appears to have been a successful accounting practice over 20 years or more, Mr and Mrs Craig established and ran a property management business, Centurion Management Services Limited ("Centurion"), which also appears to have been profitable. Some 1200 of the company's clients were said by Mr Craig to have been exposed to problems arising from New Zealand's building weathertightness issues.

[34] Mr Craig was motivated by this phenomenon, and by other concerns,<sup>6</sup> to give birth to political ambitions he appears to have entertained for some time. In 2009, he organised a public march in Auckland to draw attention to concerns that the results of citizen-initiated referenda had been ignored by successive governments. In 2010, he campaigned as a candidate for the Auckland Mayoralty in the local elections, finishing third with approximately nine per cent of the votes. Thus encouraged, Mr Craig led the creation of the Conservative Party in 2011 to contest the general election in November that year "to represent the conservative voters that were not being represented by the major centrist parties." In presenting himself to the New Zealand public as leader of the new political party, Mr Craig professed strong Christian beliefs and adherence to family values.

### **About Ms MacGregor**

[35] Ms MacGregor is the daughter of a church minister. Prior to taking up her roles with Mr Craig in August 2011, when she was 27 years old, she had worked as a television reporter and producer, among other things.

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<sup>6</sup> Mr Craig was dismayed by the government's failure in 2009 to recognise what he described as "overwhelming" 87.4 per cent opposition in a "citizens-initiated referendum" to the introduction of "anti-smacking" legislation amending the criminal law. He was also concerned about the consequences of the amalgamation of the Auckland region's autonomous local authorities into one "Super City" contrary to what he claims were the views of a majority of Aucklanders.

### **Ms MacGregor's engagement as Mr Craig's executive assistant and press secretary**

[36] On 24 August 2011, shortly after the Conservative Party was founded, Mr Craig engaged Ms MacGregor on a contract to act in the dual roles of executive assistant and press secretary/media advisor to the Party and himself. Because of her media experience, Ms MacGregor was seen by Mr Craig as being qualified to provide him with advice and guidance in circumstances where he had little experience and no training in managing, as a politician and political party leader, his relationship with news media representatives. The job description prepared for Ms MacGregor described her key tasks as working to ensure positive PR for the Conservative Party and Mr Craig; providing input and advice into strategy and messaging and carrying out other tasks as directed. Mr Craig said Ms MacGregor's responsibilities included giving him grooming advice.

[37] Mr Craig and Ms MacGregor were not previously known to each other but, at the suggestion of a third party, Ms MacGregor had approached Mr Craig about being engaged as his press secretary on a part-time contract. It quickly became apparent to both Mr Craig and Ms MacGregor that the role required Ms MacGregor to work full-time. The three-month period from Ms MacGregor's engagement to polling day on 26 November 2011 involved Mr Craig and Ms MacGregor working closely together over long hours, frequently into the evenings. Mr Craig said what had begun as a working relationship became "close and affectionate", not only because they worked together intensely but also because they shared a Christian faith and other interests.

### **The nature of Mr Craig's and Ms MacGregor's relationship in 2011**

[38] Mr Craig and Ms MacGregor developed a close friendship, discussing personal matters and sharing confidences, but in evidence, and in correspondence between their respective solicitors in February and March 2015, they expressed markedly different views about its overall nature in the lead-up to, and immediate aftermath of, the 2011 general election. In considering where the truth lies, so far as it is possible and necessary to make that determination, I have looked closely at the evidence of recorded communications between Mr Craig and Ms MacGregor during



their working relationship. They include text messages and email exchanges, cards, and letters Mr Craig sent to Ms MacGregor.

*Ms MacGregor's evidence*

[39] Ms MacGregor said in evidence that, although she held Mr Craig in high regard throughout most of the time they worked together and had an emotional and spiritual connection with him, Mr Craig made unwelcome sexual overtures to her from an early stage and that she tolerated them only because she needed to keep her job.

[40] Ms MacGregor said Mr Craig's behaviour and comments "became inappropriate" approximately two months after she began working for him. She alleges that the attention began "as just comments and shoulder touches, but it progressed and became more persistent and serious." She referred to Mr Craig visiting her flat, saying he needed to use it as a workspace to practice speeches before the 2011 election. Ms MacGregor said it became clear to her that the reason Mr Craig wanted to be there was not work related, but that his behaviour and language made it plain that he wanted to spend time with her for the purposes of companionship.

[41] Ms MacGregor said that, on one occasion at her Great South Road flat, about a month before the 2011 election, Mr Craig fell asleep on her lap. She said that, while she did not want to raise her concerns with Mr Craig because the role was important to her, this incident caused her to feel anxious and extremely uncomfortable. She said that two of her flatmates at that time raised concerns about Mr Craig's visits, which were frequent in the weeks leading up to the 2011 election. Ms MacGregor said that Mr Craig would make inappropriate comments about how much he enjoyed falling asleep in her lap and that he would ask her for massages, mostly at inappropriate times, such as when they were working late at night.

[42] Ms MacGregor said the word "debrief" became code for Mr Craig spending time with Ms MacGregor discussing personal matters, being comforted by her and/or being massaged. Immediately prior to the 2011 election, Mr Craig was requesting "debrief sessions" on virtually a nightly basis. The debriefs were said to have occurred occasionally at Ms MacGregor's flat but mostly at work or by telephone.

[43] Ms MacGregor said the culmination of Mr Craig's inappropriate behaviour was an incident on election night, after the results were published, when they returned to the Conservative Party's headquarters. Although there was intimate contact between them in an apartment above the offices, the intimacy involved only kissing and intimate touching. It was never repeated. Ms MacGregor said Mr Craig initiated the contact that night and that she stopped it.

*Mr Craig's response to Ms MacGregor's evidence*

[44] During the course of the working relationship, Mr Craig sent Ms MacGregor the four personal letters: in November 2011; February and October 2012; and December 2013. They include descriptions of his feelings of affection for Ms MacGregor and, he said, they demonstrate his genuine concern for Ms MacGregor's wellbeing. He also sent her emails and text messages conveying similar sentiments. Mr Craig said that Ms MacGregor and he had a "special relationship" and that she responded positively to his correspondence, both in their personal interactions and in cards, emails and text messages which she sent to him.

[45] Mr Craig denied there was anything in his behaviour or comments that was inappropriate in the period up to the 2011 election. He acknowledged that, on occasions in 2011, he practiced speeches at Ms MacGregor's flat which was close to the campaign office. He said that it was Ms MacGregor who suggested that and, furthermore, that on some occasions she would prepare a lunch for Mr Craig and herself to share at the flat. Mr Craig said that on a small number of occasions (perhaps four or five) he rested on the couch at the flat, but only ever at Ms MacGregor's invitation. Mr Craig said that he fell asleep on Ms MacGregor's lap on at least three occasions, on two of which Ms MacGregor sang Christian worship songs to help him get to sleep. Given Mr Craig's view that he was at the flat at Ms MacGregor's invitation, he said he had no reason to think there was any concern about him being there. He said he did meet a couple of Ms MacGregor's flatmates and conversed with them and they never raised a concern with him about his presence.

[46] Mr Craig accepted that the intimate contact on election night was inappropriate. He said he brought it to an end and that Ms MacGregor and he agreed

there needed to be boundaries to their personal relationship. He said he put those in place.

*The 2 November 2011 letter*

[47] I regard the first of the four letters sent to Ms MacGregor, dated 2 November 2011 (the 2 November 2011 letter), and Ms MacGregor's response to it as establishing just how quickly the personal relationship developed. In the letter, Mr Craig referred to and thanked Ms MacGregor for her efforts putting together a brochure, describing her as "a committed, dedicated helper and someone who had worked hard and without complaint." He said that he had got to know her really well and that that had "been an absolute privilege, a lot of fun and a blessing." He described her as "an amazing woman" and said he believed they had a "special" relationship. The letter refers to shared spiritual beliefs and refers to Ms MacGregor singing to him and to their praying together. In the letter, Mr Craig said that he loved it when Ms MacGregor laughed and smiled; that they were "kindred spirits" on diligence and hard work and that she was "too precious to burn out."

[48] The letter also contains flirtatious and sexually suggestive elements:<sup>7</sup>

The other day I got asked some questions. I have great people that keep tabs on me. Questions were: "Colin, are you having an affair?"  
"Do you think your relationship with your PA (i.e. you) is special?"  
"Have you kissed her?"  
- It's great to have people that ask the straight questions.  
Well, obviously the answer to the first is 'No', unless I missed something ☺.

The second question was interesting; I said, "Yes" ... Anyway - not that I said all that to my friend - I just said, "Yes - I think we work amazingly well together." And again, obviously the answer to last Qn was "no", not that I wouldn't want to, a lot, but that is a boundary.

The final thought on this is that I have never even given you a hug. I actually regret that. There have probably been a couple of times I would have liked to (if it was OK with you) and I do give lots of people hugs including women if they are OK with it. One to discuss?

Anyway I am sure you have worked out by now that I am not a perfect man (not that I will give up trying). Thanks for being such a wonderful help and support.

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<sup>7</sup> The excerpts from text messages, cards, letters and other correspondence between Mr Craig and Ms MacGregor that are included in this judgment retain the original spelling, punctuation and abbreviations as written, and the formatting is replicated so far as is possible.

While I am on the subject of “imperfection” I do owe you an apology.

You will recall the “low cut top” incident (and let me just deviate for a moment to thank you for dressing modestly since then).

I was very clear at the time on the need for you to wear less revealing tops but of course I only knew that because I had looked at (down) the low cut top you were wearing.

I usually have very good control of what I look at and I was caught off guard at the time. But there are no excuses. My eyes went where they should not have gone. I apologise and would like you to forgive me.

[49] Mr Craig quoted a poem and spoke very positively of the work he believed Ms MacGregor could do to support him during the election campaign, concluding:

I am a great believer in your character and abilities. Thanks for being such a wonderful friend and more.

Love  
COLIN

*Ms MacGregor's response to the 2 November 2011 letter*

[50] Ms MacGregor said that, at the time she received the letter of 2 November 2011, she was experiencing confusion and stress. On one hand Mr Craig's attention and compliments were very flattering. However, because he was married and because of the values he stood for, some of his behaviour was obviously wrong and inappropriate. Ms MacGregor said that, given her lack of power in the relationship, she also struggled with “whether or not she should be calling Mr Craig on his behaviour, or setting limits.” She said her concerns led her to see a counsellor based in Mount Eden around October or November 2011. The counsellor advised her that Mr Craig was a rich man taking advantage of her.

[51] If Ms MacGregor found elements of Mr Craig's letter unwelcome when she received it, she did not say so to Mr Craig. Her response to the handwritten letter was by text message, which seems to have been the most common means by which Mr Craig and Ms MacGregor communicated when they were not in each other's company. On 4 November 2011 at 3.52 pm Ms MacGregor sent a text beginning:

Thank you so much for your letter :)

That was followed two minutes later by another text:

Oh dear. Thinking of you ...

[52] Later that day Ms MacGregor sent a text reading:

Colin “really wish you could rest :) i still have a headache, just need a healthy dinner and rest. Please be careful with yourself .. I really care about you.

Mr Craig responded a short time later:

Sorry travelling so delayed response. You know I really care about you too. Make sure you get a good dinner and a good rest. Praying and thinking of you. If I get a chance will text a scripture or 2 later. YAW and very precious. C.

Mr Craig explained in evidence that “YAW”, meaning “you are wonderful”, was an acronym he frequently used in his communications with Ms MacGregor.

[53] Ms MacGregor’s response reads:

Thanku so much ... such a treat .. you really are wonderful. I hope theres time for me to loosen up your shoulders tomorrow...

The reference to loosening Mr Craig’s shoulders is to Ms MacGregor giving Mr Craig a massage.

[54] Judging by the exchanges of text message alone, the relationship appears to have continued in a similar vein. On 21 November 2011 at 12.17 am, for example, Ms MacGregor sent Mr Craig a text reading:

... I know im not meant to say this, but i really enjoyed spending time with you today.. And i think its very unique that we connect and communicate so instinctivly. Wish I could say goodnight the way i really want to...

[55] And Ms MacGregor said this in a text message sent on 22 November at the end of a string of messages they exchanged between about 2.30 am and 3.11 am:

We certainly bring out the best in each other. And i love that we see the world in a similar way. God is doing wonderful things through u. Get comfy, and dream big dreams tonight:) phone on silent k! huuge hug, and so much love and gratefulness to u for who u are. OoO0Oo0

[56] The exhibited text messages are not always easy to put into context because the evidence did not include copies of all of Mr Craig's texts, particularly those leading up to and during election day, 26 November 2011. In the absence of contrary evidence, it might readily be inferred from Ms MacGregor's language that Mr Craig's affectionate sentiments were reciprocated in a manner which is inconsistent with Ms MacGregor's claims that she found aspects of Mr Craig's behaviour around that time inappropriate and unwelcome. Questioned about that, Ms MacGregor said that she was selective in responding to Mr Craig. On one hand, she valued the positive comments about her ability and work performance and wanted to let Mr Craig know that. On the other, however, she was disturbed by the flirtatious elements of the letter and Mr Craig's behaviour towards her. There is no evidence that Ms MacGregor conveyed such mixed sentiments to Mr Craig around that time. In cross-examination by Mr Craig, Ms MacGregor acknowledged that, in 2011, Mr Craig and she developed a close emotional connection with each other.

*The election night 2011 incident*

[57] Ms MacGregor and Mr Craig worked long hours in the few days up to 26 November 2011, election day, and they spent most of that day together. Late that evening, after the polling results showed that the Conservative Party had failed to win a sufficient number of Party votes to secure seats in the new Parliament, Mr Craig drove Ms MacGregor back to the Conservative Party's offices where she had left her car.

[58] It is not disputed that Mr Craig and Ms MacGregor went upstairs to the apartment at the Conservative Party offices together when there was no need for them to do so. It is also common ground that they kissed; that they lay on a bed together; that some of their clothing was removed but that they did not have sexual intercourse on that or any other occasion. Mr Craig and Ms MacGregor disagree about who initiated the intimate contact and who brought the brief physical liaison to an end that night. Ms MacGregor said that Mr Craig prayed and thanked God "for this special time." Mr Craig said that although he went home after the incident, Ms MacGregor stayed the night at the apartment and tried to encourage further intimacy in the morning when he returned.

[59] Mr Craig said he promised Ms MacGregor he would not tell anyone about the incident and it would not be held against her in any way. He said that, having discussed the matter with Ms MacGregor in the week following the incident, he immediately put in place clear boundaries to ensure that the incident was not repeated.

[60] Ms MacGregor's evidence was that she "felt scared and awful" immediately after the incident and that it marked the point at which she lost faith and trust in Mr Craig. Ms MacGregor told the Court that, notwithstanding that reaction, she wanted to keep her job with Mr Craig so that she could "keep afloat." He owned the car that she drove; she needed to keep her rental property because she had a dog and it would be hard to find another suitable property; and she could not easily find another job in her area of work. Ms MacGregor said, however, that on the day after election day she told Mr Craig how awful she felt about the incident, that it could not ever happen again, that they needed to have some "really clear boundaries in place" and that she wanted them written into her contract. She said she felt anxious about the future and that it took her a while to decide what to do. Ms MacGregor said she did not have to make a decision until after the Christmas holidays and that while she eventually decided she wanted to keep the job, she did not come to that conclusion straight away.

*The relationship immediately after the general election and in December 2011*

[61] Mr Craig and Ms MacGregor took some time in the two or three days after the election to recuperate from what had been a heavy schedule of commitments in the lead-up to it. While Ms MacGregor regarded the Conservative Party's share of just below three per cent of the party votes cast in the election as a creditable result, given that the Party had been relatively recently formed, she described Mr Craig as being very disappointed. Text messages she sent to Mr Craig reflect not only a professional commitment to assisting Mr Craig in his communications with news media representatives over the election night result, but also concerns for Mr Craig's personal wellbeing. Only a few of Mr Craig's text messages around this time were recovered and adduced in evidence. It is apparent from those which are available and from the text messages sent by Ms MacGregor that both Mr Craig and Ms MacGregor continued to care about each other's physical and emotional wellbeing. The text

messages also indicate that there remained – for a time – a degree of yearning for further intimacy on the part of each of them.

[62] On 28 November 2011 at 9.57 pm, Ms MacGregor sent the following text to Mr Craig:

:) ....you make my heart melt... Love ya. Nanite..

[63] When questioned about this text by Mr Craig in cross-examination, Ms MacGregor did not accept that there was any romantic element to it. She maintained that, because the immediately preceding text from Mr Craig to her had not been produced, it was not possible to know the context in which she expressed herself in that way. That evidence was disingenuous: the words Ms MacGregor used speak for themselves. I infer that Mr Craig had made a comment in affectionate terms which evoked Ms MacGregor's affectionate response. Ms MacGregor's language in that text and others which followed over the ensuing few days showed no antipathy towards Mr Craig's overtures and Mr Craig appeared to regard the texts as encouraging further communications of a similar kind. Further exchanges of text messages in early December 2011 demonstrate that the personal relationship between Mr Craig and Ms MacGregor continued to be intimate at that time.

[64] On 6 December 2011, for example, Mr Craig sent Ms MacGregor the following text at 9.35 pm:

Hi Rach. I will be at the office at about 11:30am tomorrow to lets plan diary then. Technically this is now a work related text. :) . Hope you are OK and had a good day. IAHAMYM (I am having a miss you moment). WYWH. YAWAB. C.

Mr Craig explained that "WYWH" meant "wish you were here" and that "YAWAB" meant "you are wonderful and beautiful". Ms MacGregor responded positively at 9.45 pm:

Thankyou... yes im in castor bay have just been to apologetics home group.. I was going to ask u if i could come in later tomorrow.. Ok if not.. but could we do diary after your lunch date? Ive been having a very missing colin day.. not fun! Thanku 4 the text, feel better now! Will try not to text u again with non work things.



[65] At 10.10 pm on 8 December 2011, Ms MacGregor sent the following text:

Hope this doesnt wake u.. Thanks for your text.. My friends have just left. Look forward to talking properly. Hope ur day got a bit better and that your not still doing accounts.. Goodnight. R

Mr Craig responded at 10.14 pm:

Hi. No I have stopped work as I fell asleep in my chair and figured best not to continue. In fact just tucking myself up for the night and had resolved not to send a goodnight text despite really wanting to..... and then you text me:). So goodnite and sleep well. I wish I could hug you forever and never have to stop. IAHAMYM. WYWH. C.

At 10.21 pm Ms MacGregor texted:

You r so wonderful. I wish the same thing. (huuuuuge huuuuuug) bless u loads and heaps and lots. WIWTWY (wish i was there with you).

Mr Craig replied:

:) have wonderful sleep. You are amazing Rachel and I miss you .... Nite.

[66] Ms MacGregor visited Mr Craig and his family on Christmas Day 2011. Mr Craig gave Ms MacGregor a silver locket as a Christmas present; she exchanged it for a charm.

*Comment and findings on the relationship in 2011, including election night*

[67] The dates on the text messages and letters exchanged by Mr Craig and Ms MacGregor, and the content of those communications, speak for themselves but the participants differ in their explanations and on what inferences an objective observer might properly draw from them. There is some common ground about relevant events but, in significant respects, Ms MacGregor and Mr Craig disagree about the frequency and timing of events and Mr Craig's conduct in so far as that is the subject of complaint. Since the allegations of sexual harassment assume such significance in Mr Craig's claim against the defendants, I have been required to make findings not only about what he did during the relationship but also how Ms MacGregor responded to it and, particularly, whether his conduct was troubling to Ms MacGregor and unwelcome. I have recognised that Ms MacGregor's reaction to

Mr Craig's behaviour may have differed at various times in the three-year period they worked together.

[68] Having considered the whole of Ms MacGregor's evidence, and having assessed her demeanour in both evidence-in-chief and under cross-examination, I accept that Ms MacGregor was confused about her relationship with Mr Craig in 2011, once it became apparent that it had become something more than a conventional working arrangement. I regard her responses to the 2 November 2011 letter as reflecting ambivalent feelings about Mr Craig and their relationship at that time.

[69] In August 2011, there was a 16-year age gap between Mr Craig and Ms MacGregor. Ms MacGregor appears to have had a strong Christian faith and at least some political views in common with Mr Craig. As she told Mr Craig many times in her text messages and in cards she gave him on special occasions, she admired and respected him. Ms MacGregor's new role as a close advisor to the high-profile leader of a new political party which had credible aspirations to be represented in Parliament placed her in an unaccustomed position of some prominence among her former news media colleagues. She was the gatekeeper to Colin Craig and someone to be courted for opportunities to interview the party leader.

[70] Having regard to the exchanges quoted in the preceding section, I reject Ms MacGregor's evidence that, in late November and early December 2011, she felt anxious about the future and that she took a while, until after the Christmas holidays, to decide what to do. Although Ms MacGregor said in evidence that it was not until January 2012 that she decided that she would remain in employment with Mr Craig, she signed an employment agreement under the Employment Relations Act 2000 on 23 December 2011. It was expressed to have been made on 19 December 2011 but the schedule to the agreement shows her employment starting on 12 December 2011. I infer from Ms MacGregor's decision to cease being a contractor and to become an employee that she had decided to make a firm commitment, just over two weeks after the 2011 election, to continuing to work closely with Mr Craig, notwithstanding that the next election would be three years away.

[71] While I accept that Ms MacGregor was never sexually attracted to Mr Craig in the sense of contemplating having an affair with him, I have concluded from seeing and hearing Ms MacGregor give evidence; from reading many text messages she sent to Mr Craig and from hearing the evidence of other Conservative Party employees,<sup>8</sup> that Ms MacGregor quickly became and remained for a considerable time infatuated by her position. Starting her career with relatively modest prior roles in the news media, she had become a trusted advisor and close confidante of the leader of a political party that had serious prospects of winning seats in Parliament. She considered Mr Craig to be someone who understood and, at least purportedly, shared her Christian values and interest in Christian music; who appeared to hold her experience and ability in high regard and who was apparently motivated to encourage her career development. Ms MacGregor had joined the Conservative Party in what would inevitably become a high profile and senior role in terms of her dealings with her former colleagues in the news media. So long as Mr Craig continued to demonstrate reliance upon her professional opinion and advice and to praise her performance, she could rely on earning a good income. Most importantly to Ms MacGregor, in my perception, the political success of Mr Craig and the Conservative Party in reaching the five per cent threshold of general election party votes to secure seats in Parliament would confer significant kudos on her and greatly enhance her career prospects.

[72] I am satisfied also that Mr Craig was flattered and encouraged by the ministrations he received from a much younger woman who plainly admired him and to whom he was sexually attracted, as his letters to her reflect.

[73] For Mr Craig and Ms MacGregor, the 2011 election was the culmination of many hours of working together intensively on a project that was challenging and exciting for them. In those somewhat heady circumstances, what I perceive to have been Ms MacGregor's emotional attachment to Mr Craig made her vulnerable to any sexual advance or flirtation. That, and Mr Craig's sexual attraction to Ms MacGregor, made it almost inevitable that, once they went upstairs to the apartment on election night 2011, there would be some intimacy.

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<sup>8</sup> Ms Beverly Adair-Beets and Ms Angela Storr.

[74] It no doubt suited Mr Craig's and Ms MacGregor's respective purposes for each of them to claim in evidence that they been seduced by the other; that they realised fairly quickly that the intimacy should not develop further and that they, rather than the other, brought it to an end. But I did not find either Mr Craig or Ms MacGregor wholly credible in their evidence of what happened that night and what they did afterward.

[75] Mr Craig was in control of the situation from the time he elected to drive Ms MacGregor back to the Conservative Party offices to collect her car. There was no need for him to go upstairs to the apartment, whether at Ms MacGregor's invitation or otherwise. Given my conclusion that Mr Craig had a significant sexual interest in Ms MacGregor at that time, I do not accept his assertion that Ms MacGregor was the sole initiator of their intimate activity or that he alone brought it to an end. It is more likely, in my view, that he orchestrated or, at least, exploited the situation. Given my view that Ms MacGregor's personal engagement with Mr Craig was more emotional than sexual, I find it to be unlikely that she invited him to resume their intimacy the following morning, even though she may have decided to stay the night in the apartment rather than return to her flat.

[76] I am unable to accept, however, Ms MacGregor's evidence that she felt "scared and awful" immediately after the incident and that it marked the point at which she lost faith and trust in Mr Craig. While Ms MacGregor may have been confused by what had occurred, her text messages to Mr Craig shortly after 26 November 2011 and the exchanges between them in the early part of the following month suggest that she has exaggerated her response to what had occurred.

[77] I am satisfied the kissing and touching in the apartment was initially consensual but that both participants realised that it was inappropriate conduct that should not continue. I accept that they agreed there should be no repetition; to use Mr Craig's expression, that there should be "boundaries" to their personal engagement. There is no evidence of any tangible boundary-setting at that time, however, and I reject Mr Craig's assertion that he took immediate steps at that time to put boundaries in place.

## **The nature of Mr Craig's and Ms MacGregor's relationship in 2012**

[78] Ms MacGregor was on holiday until 10 January 2012. While her text messages to Mr Craig during January are caring and at times affectionate, they do not contain the romantic elements which feature in the texts she sent in the week or so after the election. During the holiday break, Ms MacGregor appears to have consolidated her relationship with her new boyfriend. I accept her evidence that there were good practical reasons for her to choose to remain in her position as Mr Craig's personal assistant and media advisor/press secretary but I am not persuaded that she was trapped in the role by her financial circumstances at that time. If Ms MacGregor had been seriously disturbed by what had happened on 26 November 2011, as she claimed, she was well able to begin looking for another position in December or after the holiday period. She did not give evidence of having made any attempt to do so. It is evident from Ms MacGregor's text messages to Mr Craig in January and February 2012 that she retained her admiration of Mr Craig's personal qualities and remained committed to her role of supporting his continuing political aspirations.

[79] I accept, however, that by the time Ms MacGregor returned to work after the 2011-2012 holiday break she did not entertain any romantic or sexual interest in Mr Craig. I find that both Ms MacGregor and Mr Craig were committed to rebuilding the Conservative Party's and Mr Craig's electoral credibility in the two years or so before the start of the 2014 election campaign. Ms MacGregor considered it to be important that they should agree on arrangements for the future conduct of their working relationship that precluded any repeat of the election night encounter. Ms MacGregor said that in the days, weeks and months following that incident she told Mr Craig that what had occurred must not happen again and that they had ongoing conversations, some of which were quite lengthy, about what contact was and was not appropriate. She said, however, there was very limited acknowledgement from Mr Craig that what had occurred was inappropriate and that he was also slow to record the clear boundaries and guidelines that she was seeking.

[80] Although Ms MacGregor and Mr Craig talked about setting boundaries for their personal relationship, I am satisfied that Mr Craig did not take any practical step in that regard at that time, other than to resolve there should be no intimacy of the kind

that occurred on 26 November 2011. If Mr Craig had thought that he had put up a genuine boundary or barrier against other forms of inappropriate conduct by the discussions he had with Ms MacGregor, the terms of a letter he sent her in February 2012 indicate that he cannot have thought there was any impediment to harbouring sexually-oriented thoughts and expressing to Ms MacGregor his continuing interest in a sexual relationship with her.

[81] Mr Craig acknowledged as much when he gave evidence about the inner conflict he experienced between his romantic and sexually oriented thoughts about Ms MacGregor and the feelings he had for her, and his acceptance that he could not give them tangible expression through physical intimacy with her. The problem, as I perceive it, is that Mr Craig believed he was entitled to convey his thoughts and feelings verbally to Ms MacGregor, and that she would understand and accept his expression of such sentiments, because she reciprocated his feelings.

[82] The decision about whether there was sexual harassment after November 2011 turns very much on whether Mr Craig's assessment of Ms MacGregor's opinion was right. It will be evident from what I have held above to be Ms MacGregor's position by the end of January 2012 that I have concluded he was wrong.

*The 7 February 2012 letter*

[83] On 2 February 2012, Mr Craig left Auckland alone to begin a personal retreat at a beach property. During his time away, Mr Craig prepared a long letter to Ms MacGregor dated 7 February 2012 ("the February 2012 letter") which he described as "ABSOLUTELY PRIVATE AND CONFIDENTIAL". It appears from its terms that Mr Craig considered the letter to be a personal meditation and that he did not intend it to be received as an employment communication. It begins:

Dear Rachel (LOL that sounds formal) Hi Rach

I will start by saying "hello" .. "YAWAB"\* .. and I am not saying that because the rest of the letter is bad (I hope you will find it thought-provoking and inspiring). It was just nice to start with how I feel. ☺ - OK I just used a smiley face, not really good grammar. Please ignore all bad grammar.

It is wonderful to have time away and it has given me the chance to think, pray, and consider the year ahead. I couldn't let this time go by without doing something for you. There are lots of things I would like to do, but I really needed to stick to what was appropriate (LOL), and "no" I won't tell you what else crossed my mind.

[\* Mr Craig said this means, "You are wonderful and beautiful"]

[84] In a section headed "What this letter will be", Mr Craig said:

For starters this will not be a gushy, "how I feel about you letter" because you know how I feel about you already. It will, I hope, be a letter that helps you, and inspires you, written from the heart. I hope you will enjoy reading it but still may be challenged/encouraged along the way.

[85] In the next section, headed "Can I Just Say", Mr Craig said:

There are significant things that happen in life. Things that you never forget and that shape who we are. Meeting you is one of those for me. You are important to me and so dear to my heart that words don't really cover it.

...

I know that we (you and I) were meant to meet and work together. It is a God ordained thing. ... You have already helped me and inspired me and if I haven't said it clearly enough "Thank you Rach, thank you for your work, thank you for your love and care, you are wonderful, and a blessing to me!"

I cannot fully explain the depth of connection that I feel with you - so I intend not to try ("cowardice or wisdom").

[86] The letter contains observations on spiritual matters, including references to the scriptures and observations on Ms MacGregor's character, all extremely positive. In a section headed "Thoughts on faith (ie. really trust in God) – Rach and a husband", Mr Craig began by saying:

Whatever I say, I say because I genuinely love you and want the best for you. This could be a slightly tricky topic.

He then made several personal comments about Ms MacGregor and the prospect of marriage, including to her then current boyfriend, with an emphasis on biblical and spiritual references. The section concludes:

Alright.. moving on and I hope you are still with me and still love me.. now for an easier bit..

[87] There are then further references to spiritual matters, including reflections on the nature of a good man who, among other things loves God, has love and passion, and stands on principles. A short section headed "About the Job" and comprising only seven sentences is then followed by sections headed "You and Me" and "Things I am Doing". Because Ms MacGregor's evidence about her reaction to the election night incident, Mr Craig's subsequent conduct towards her, and to receiving the February 2012 letter is not reflected in her written response to it, it is necessary to set out these sections in full:

### **About the Job**

Well it's going to be a busy year. I know that we will get some great things done. Last year was legendary and amazing but I truly believe that with the magazines we may be able to do even as well again this year.

I suppose that you know you are perfect for the role. You have a wide variety of skills to do the job and they are unique skills. There could be no better person – even if I had gone looking and interviewed everyone I could find – it was always you that was needed.

Okay, well enough about the job – holiday mode and I have nothing further to say LOL.

### **You and Me**

Hmmm .. well I put off writing this section till nearer the end. I think it is important to recap our discussions so that we are clear where we are. This will be very honest and blunt (you can get the necessary supporting hug later).

There is between us something special and wonderful. It enables us to work perfectly as a team and to do great things. It makes it fun and exciting. There is also a strong attraction to each other. We do love each other but recognize that there are boundaries in place. For my part spending more time apart has not changed what I think or feel. What about you now you have a boyfriend and we have spent time apart? It's OK if it has - let me know.

I know you quite well now. I am glad I do, it is an honour and a privilege to know you. Seriously I mean this. I love spending time with you.

Physically I do desire you, there are sometimes I just want to kiss you and ... well ... go further .. I am just being honest this is how it is. I have resisted going down the kissing track and shall continue to do so. I have left the door open for you to say if you need that (and I want you to be brave and honest enough to ask if necessary), but I expect it would be infrequent and of course there are still boundaries.

I know that you were counselled that I would "reject you" (or something similar - I don't remember what the exact words were) because that is what men do in such situations. You have had a bad run with men in your life, maybe you fear a further rejection. Well I don't always do what "normal men"



do, and anyway true love does not give up - it endures all things. I will never reject you Rach ... hmmm I wish I could look you in the eyes right now and say it. I want you to know I am here for you if you ever need me - you need to know that. I think I care as deeply for you as someone could ever do and I want the absolute best for you.

Do we need to talk about this further sometime? If you want/need to, let me know OK.

### **Things I am doing**

Following on from the above here are the things that I am doing to ensure our relationship is constructive and appropriate. My own little action plan if you like (pretty much all as already discussed with you):

1. Texting only for work. Ouch this hurts – I like texting you. OK question - is it exciting to get texts from me or is it just blah?? Why do I find texts from you exciting?
2. Limitation of time we are alone i.e. not nights or weekends.
3. When I think of you (which is more often than I have admitted too!) I pray for you. If I love you, then I want the best for you, the best for you is God's plan.
4. Giving you a massage/hug when you want one (most work days LOL). My theory here is that it's better than going cold turkey with no Rach contact at all (Perish the thought ☹). In your words it's "comforting".
5. Encouraging you to seek God and be close to him. Making our relationship focus on good and holy things. Praying together.
6. Encouraging you to be a supporter and helper of my wife Helen. This is actually a lot to ask – I realize that. But again love is not self-seeking and if you help strengthen and build my marriage then you are doing good not evil. If/when you are married and if things don't change (i.e. you haven't moved away) I would likewise be a supporter and encourager of your marriage.

I think that's it – at least what I can think of. Can you think of anything else that would be a good idea? I always like your input.

### **The end**

Ok well I hope this letter was a good one. I wanted it to be. I bet it ended too quickly so you should have read slower haha .. Maybe I should finish off with a list of things I pray for you. You know you can talk with me at any time and if you need anything then you just ask.

5 Things I pray for you:

1. That you would know God and the hugeness of his love for you.

2. That the scars and pain of the past would heal. May the Holy Spirit comfort you
3. That you would trust God and see he is the best one to direct the path of your life
4. That with each day you would have fresh life and fresh vision
5. That He would guard you about and keep you from evil

I pray for lots of other things too ...

Love you Rach.

You are a wonderful woman, a woman of quality, and of noble character. You are beautiful. May the Holy Spirit be in your life in a special way this year.

Colin

p.s. 12 pages .. Wow – a pretty good effort . Do I get a thumbs up?

LOL - just read the letter – it made me smile in places – hope it does you too. Be encouraged be inspired ... C.

[88] Ms MacGregor's response was sent to Mr Craig on Monday, 13 February 2012 in an email with a subject line, "Thank-you". It reads:

I just wanted to say thank-you So so so sooo much for your letter. Some of the words in it are powerful. It means so much to me that you have taken the time to write it. Thank-you.  
I'm re-reading and re-reading it ☺

See you when you get here ☺

[89] Ms MacGregor's evidence was that her positive response was directed to the praise of her personal qualities, the encouraging comments about her performance and potential, and the references to some rules for the future conduct of their relationship.

*The one-page "Things I am Doing" note*

[90] Because it affects my view of Mr Craig's credibility, particularly in relation to the issue of whether Mr Craig took appropriate steps to put in place guidelines for the conduct of their personal relationship, it is necessary to address in some detail that aspect of the February 2012 letter which is contained in the section headed "Things I am Doing".

[91] In an attempt to counter Ms MacGregor's assertions that he had been slow to record any such guidelines after election night 2011, Mr Craig produced in evidence a one-page, undated document headed, "Things I am Doing". He said it was a file note that he prepared in November 2011 in which he set out six points he thought would be helpful for rules of conduct. It was listed by Mr Craig in the Agreed Bundle of Documents as having been dated 21 November 2011. Before the hearing, as required by r 9.5(2) of the High Court Rules 2016, the defendants noted their objection to the ascribed date.

[92] Mr Craig said in his evidence in chief that, when he wrote to Ms McGregor in February 2012, he relied on the one-page document to prepare the corresponding part of the letter. He acknowledged that he did not give the one-page note to Ms McGregor at any time. As Mr Henry exposed in his cross-examination, however, Mr Craig's attempt to promote the one-page "Things I am Doing" document as a precursor to the 7 February 2012 letter was patently false.

[93] I set out the one-page document in full:

**Things I am Doing**

Following on from the above here are the things that I am doing to ensure our relationship is constructive and appropriate. My own little action plan if you like (pretty much all as already discussed with you):

1. Texting only for work.
2. Limitation of time we are alone i.e. not nights or weekends.
3. When I think of you I pray for you.
4. Giving you a massage/hug when you want one. In your words it's "comforting".
5. Encouraging you to seek God and be close to him. Making our relationship focus on good and holy things. Praying together.
6. Encouraging you to be a supporter and helper of my wife Helen. This is actually a lot to ask – I realize that. But again love is not self-seeking and if you help strengthen and build my marriage then you are doing good not evil. If/when you are married and if things don't change (i.e. you haven't moved away) I would likewise be a supporter and encourager of your marriage.

[94] I repeat the corresponding points 1, 3 and 4 in the February 2012 letter. The italicised wording below does not appear in the one-page note:

1. Texting only for work. *Ouch this hurts – I like texting you. OK question - is it exciting to get texts from me or is it just blah?? Why do I find texts from you exciting?*
- ...
3. When I think of you *(which is more often than I have admitted too!)* I pray for you. *If I love you, then I want the best for you, the best for you is God's plan.*
4. Giving you a massage/hug when you want one *(most work days LOL). My theory here is that it's better than going cold turkey with no Rach contact at all (Perish the thought ☺). In your words it's "comforting".*

[95] I regard the italicised portions of the February 2012 letter as being commentary by Mr Craig which indicate that, although he set out suggested rules of conduct for the future, he wanted Ms MacGregor to know that he retained a romantic interest in her. That was consistent with other parts of the letter.

[96] It is clear from the formatting of the one-page note that Mr Craig had produced it by copying and pasting, and then editing, the “action plan” from an electronic copy of the February 2012 letter. First, unlike any of the other five points in the note, the numeral “1.” in the first point in the note has a blue typeface. That corresponds with the blue typeface for the second and third sentences in the first point in the February 2012 letter which are in the form of questions for Ms MacGregor to answer. Mr Craig explained in the letter that he had used blue typeface for questions he posed “for ease of reading”. None of the other numerals nor any of the contents of the one-page note are typed in blue.

[97] Second, the one-page document begins, under the heading, with the sentence:

Following on from the above here are the things I am doing to ensure our relationship is constructive and appropriate.

That introductory sentence only makes sense when it appears in the same position, under the section heading, in the letter. It is an obvious reference to the preceding paragraphs of the letter; there is no preceding content in the note.

[98] The one-page note is consistent with the representation of Mr Craig's position set out in the Chapman Tripp letter of 13 March 2015 to Ms MacGregor's solicitors, in response to Ms MacGregor's allegations of sexual harassment. The Chapman Tripp letter sets out the six action points without any of the embellishments that appeared in the February 2012 letter. Mr Craig confirmed, when pressed by Mr Henry, that his lawyers relied upon the contents of the note to demonstrate to Ms MacGregor's solicitors that Mr Craig had taken steps after the election night incident to put boundaries around personal contact with Ms MacGregor. Mr Craig claimed, however, that he no longer held a copy of the February 2012 letter on his computer by the time Ms MacGregor told him of her complaint to the Human Rights Commission. He said he did not have a copy of the February 2012 letter on his computer in March 2015 when he sent the one-page version of the "action plan" to his solicitors in response to Ms MacGregor's detailed allegations.

[99] There was no basis for Mr Craig to assert in the Agreed Bundle of Documents that he had prepared the note on 21 November 2011; that date is five days before the election date. Under cross-examination, Mr Craig first said that the document was prepared in November 2011 but not on the 21<sup>st</sup> of that month. He then suggested that it may have been prepared on the 21<sup>st</sup> day of the 12<sup>th</sup> month, not the 11<sup>th</sup>. It was only when Mr Henry pointed out the implications of the blue numeral 1 and the preamble "Following on from the above" in the one-page note that Mr Craig conceded he had taken the material for the one-page document from an electronic copy of the February 2012 letter at some later stage and edited it.

[100] I observed Mr Craig's demeanour closely while he was being questioned about these matters, and noted his evasiveness and prevarication until it became untenable for him to maintain his earlier positions. I reject as deliberately untrue Mr Craig's evidence that he did not have an electronic copy of the February 2012 letter in March 2015. He referred to it in his letter to Ms MacGregor on 22 October 2012, saying he had reread it, so he must have had a copy then. Mr Craig acknowledged he did not give the one-page note to Ms MacGregor at any time so there was no reason for him to prepare that edited version after February 2012 other than to give it to Chapman Tripp. It is highly probable that he prepared the one-page document he gave to his solicitors by copying and pasting an edited version of the action plan from the

electronic copy of the February 2012 letter he retained, to give the appearance that he had communicated a bare statement of conduct rules to Ms MacGregor, without the compromising embellishments.

[101] Having reached the conclusion that Mr Craig had an electronic copy of the February 2012 letter in his possession in March 2015, I infer that he did not disclose the letter to his solicitors because its contents tend to support the allegation of sexual harassment. He is likely to have felt encouraged to withhold it because it was not referred to in the detailed letter Ms MacGregor's solicitors Gallaway Cook Allen sent to Chapman Tripp on 18 February 2015. Given its significance, and the references in the Gallaway Cook Allen to the other letters Mr Craig sent Ms MacGregor, I conclude that she overlooked it because she did not possess a copy of it in March 2015, having given it to a friend, Mr Jordan Williams, in November 2014. I have no doubt that, had Ms MacGregor not forgotten about it, it would have received close attention in her lawyers' letter.

#### **The formal nature and terms of Ms MacGregor's engagement**

[102] It is convenient to pause in the narrative of events concerning Mr Craig's personal relationship with Ms MacGregor to address the formal aspects of the working relationship. They are relevant to issues over the setting of boundaries between the working and personal relationships between them; whether Ms MacGregor felt trapped in her role during 2012, 2013 and 2014; claims that Mr Craig placed Ms MacGregor under financial pressure to sleep with him and the reasons for and circumstances of her resignation.

[103] From the time Ms MacGregor was first engaged to assist Mr Craig in August 2011 until mid-December 2011, Ms MacGregor was an independent contractor who invoiced Mr Craig's company, Centurion, periodically. Invoices were rendered in September and October 2011 but then not until 23 December 2011 when Ms MacGregor apparently provided invoices covering her services in the period from 31 October 2011 to 19 December 2011. The invoices up to that date for Ms MacGregor's time and expenses total \$43,681.74. On 24 December 2011,

Mr Craig provided a reconciliation of Ms MacGregor's invoices and payments made by Centurion which included a payment on 24 December 2011 of \$16,049.25.

[104] Mr Craig explained that Ms MacGregor and he had discussed a change in Ms MacGregor's status from contractor to employee and, as the employment agreement she signed on 23 December 2011 indicates, at a wage of \$40 per hour (subject to reviews at three months and then six months). The employment agreement was between Ms MacGregor and Centurion, with Ms MacGregor being employed as "Executive Assistant and Public Secretary/Relations" to Mr Craig. There is nothing in the agreement or in any other contemporaneous document about the setting of boundaries to their personal relationship. Mr Craig said that the February 2012 letter served that purpose.

[105] Ms MacGregor said it was not until August 2012, when Mr Craig produced a document headed "Employment Review" that anything was recorded which acknowledged her request for barriers in the personal relationship. It describes one of Ms MacGregor's duties as being to "diary, facilitate, encourage and help Colin to set aside time for Helen". The document makes reference to "obvious limits" in the relationship between Ms MacGregor and Mr Craig, including staying at different motels. Ms MacGregor said that those references, although "disappointingly brief", were very important to her because, in the preceding months, she had worked hard to promote personal boundaries, and had asked Mr Craig to stipulate in her contract that they stay in separate motels. The idea of Ms MacGregor supporting Mr Craig's marriage was important to Ms MacGregor as a way of ensuring that Mr Craig maintained appropriate boundaries with her.

[106] The employment agreement signed in December 2011 contained provision for a review of Ms MacGregor's remuneration after three months and then after six months. The first review occurred in May 2012 at which time there were refinements to Ms MacGregor's job description. There was also a letter prepared by Mr Craig but purporting to be written to Ms MacGregor by both Mr Craig and his wife, Helen. It is headed as if it was part of the employment agreement. The letter appears to be an attempt by Mr Craig to address the nature of his working relationship with Ms MacGregor. It contains this paragraph:

Also as part of your duties you will be spending time with just Colin and it is important that the 2 of you work intuitively as a team being able to support each other and to be productive. At the same time there are obvious limits (e.g. different motels or ensuring staying at person's home if travelling). Ideally you will be like brother and sister.

[107] There is no document providing any response by Ms MacGregor to the May review and the letter which was added to the employment agreement.

[108] A further employment review was undertaken in August 2012 when Ms MacGregor sought to negotiate increased remuneration. In a memorandum dated 10 August 2012, Mr Craig summarised what he said were the discussions which had taken place in May. He referred to the job description and other matters covered in the document, which was headed "Additions proposed 21 May 2012" and referred also to the letter to Ms MacGregor from Mr and Mrs Craig. In discussing Ms MacGregor's claim for recognition of "after hours work", Mr Craig suggested that the general approach had been to arrange for Ms MacGregor to work for around 40 hours per week, being flexible on the hours she needed to spend at the office. He proposed two arrangements to address the issue, one being a return to contracting for which Ms MacGregor would receive \$60 an hour for the period outside the election campaign and \$70 an hour during the campaign period. As an alternative, Mr Craig proposed continuation of Ms MacGregor's status as an employee with an increased hourly rate of \$45 an hour with an expectation that her hours would average 40 hours a week. Mr Craig suggested a follow-up meeting.

[109] In an email dated 4 September 2012, Mr Craig referred to a second review discussion and set out an offer for revised terms on behalf of Centurion. It included adjustment to the job description and the alternatives of \$47.50 an hour for wages if Ms MacGregor was to remain an employee; or \$65 an hour if she elected to become a contractor. The rates proposed confirm that Ms MacGregor was successful in negotiating increases from the amounts proposed by Mr Craig in the memorandum of 10 August 2012. The offer included payment of an allowance of \$75 when Ms MacGregor was required to stay away from home overnight and an agreement that Ms MacGregor would be expected to work an average of 37 hours a week. She was to receive pay at time-and-a-half if the average was exceeded at any time. The email



concluded with a request to Ms MacGregor that she should respond by the end of the following week.

[110] Ms MacGregor elected to revert to the status of a contractor. In a memo dated 28 September 2012 from Mr Craig to a staff member responsible for managing the payroll, Mr Craig confirmed what terms had been agreed. The note records that Ms MacGregor's last day of employment was to be 26 October 2012 and that she would receive holiday pay up to that point.

[111] Ms MacGregor said in evidence that she had never seen that memorandum, notwithstanding that it contains a note that it was to be copied to her. She accepted the content but denied that there had been an agreement that she would be paid \$70 an hour for the campaign period and said she could not recall any reference to holiday pay. Mr Craig had no reason to withhold the memorandum from Ms MacGregor or to make a false claim that he had sent it to her. I find that it is probable Ms MacGregor received the memorandum; she may have forgotten that she did. I also accept it as evidence tending to confirm Mr Craig's consistent assertion in his exchanges with Ms MacGregor and in evidence that \$70 was the hourly rate that had been agreed for the 2014 election campaign period.

[112] I conclude that from 27 October 2012 until her resignation on 18 September 2014, the apparent position was that Ms MacGregor was engaged on contract by Centurion Management Services Limited as Mr Craig's executive assistant and media and public relations advisor on agreed terms which included payment at a rate of \$70 per hour for campaign work.<sup>9</sup> It was also agreed that Ms MacGregor was expected to work an average of 37 hours per week, calculated monthly, and that she would be paid at a rate of time and a half for any hours worked in excess of that expectation.<sup>10</sup>

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<sup>9</sup> GST is not referred to in the documents. I have assumed the agreed sums are exclusive of GST.

<sup>10</sup> Having regard to the provisions of s 6 of the Employment Relations Act 2000, it is probable that, as a matter of law, Ms MacGregor was an employee throughout the period she worked for Mr Craig. While that means that she may have had entitlements to employee benefits such as four weeks paid annual leave, holiday pay and paid sick leave that were never recognised, there is no evidence Ms MacGregor or her lawyers raised that issue at any relevant time. The point does not affect any issue that it is necessary to determine in this proceeding.

## **The nature of Mr Craig's and Ms MacGregor's relationship during 2012 and 2013**

### *Ms MacGregor's evidence*

[113] Although there was a large measure of agreement between Mr Craig and Ms MacGregor about the development of their relationship between August 2011 and the general election at the end of November in that year, they gave starkly conflicting evidence about the nature of the relationship and Mr Craig's conduct after the election and during 2012 and 2013. I have said I do not accept Ms MacGregor's evidence that the 2011 election night incident represented the catalyst for a negative change in her view of the relationship. I have found, however, that by February 2012, while Ms MacGregor continued to hold Mr Craig in high regard as a friend, mentor, and the leader of the Conservative Party, there was no sexual overtone to or romantic element in her personal feelings towards him. Ms MacGregor said that, in the early part of 2012, Mr Craig's behaviour towards her improved and that for a time he ceased making direct and distasteful sexual comments. This was consistent with their agreement that their personal relationship should not overstep a proper boundary between respect and affection arising in a workplace relationship and a more prurient interest.

[114] Nevertheless, in instructing her solicitors to write to Mr Craig's lawyers in 2015, in support of her sexual harassment and pay claims, and in giving evidence in this proceeding, Ms MacGregor was highly critical of Mr Craig's conduct towards her in the latter part of 2012 and in 2013. She said Mr Craig's comments and behaviour became more and more personal, romantic and sexually suggestive. In support of her position, Ms MacGregor referred to the two letters Mr Craig wrote to her during that period.<sup>11</sup> She said that Mr Craig's close personal attention and his frustrated, but real, romantic affection caused her significant stress and concern. While she acknowledged that there had been "a small element of confusion" in her thoughts about Mr Craig around the time of the election, she was clear in her own mind from the beginning of 2012 that she did not welcome any romantic engagement.

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<sup>11</sup> Letters dated 22 October 2012 and 24 December 2013, discussed more fully below.

[115] Ms MacGregor said that, at times, Mr Craig made it very clear to her that he could employ someone else to do her job and that others within the Conservative Party were advising him to do just that. She wanted to stay in the role and needed to do so for financial reasons and that made her feel trapped. Although she by no means simply accepted everything he did or wanted to do, and made her views about those things plain to him, Ms MacGregor said that she felt she had to be extremely careful about the way in which she protested about Mr Craig's behaviour and attention to avoid putting her employment in jeopardy. She alleged that her physical and mental health began to suffer and that the stress caused by Mr Craig's actions, on top of the stressful requirements of the role itself, began to manifest itself in headaches and depression which required her to take a significant amount of time off work. Because of her status as a contractor, she was not paid for that time.

[116] I summarise Ms MacGregor's other complaints as follows:

- (a) Inappropriate behaviour continued in that Mr Craig continued to ask for massages for his back and shoulders which were sore. Although Ms MacGregor accepted that Mr Craig had a genuine health issue with his back and would normally agree to provide these, generally limiting them to rubbing Mr Craig's shoulders, she said Mr Craig's requests became more frequent and his behaviour made her feel uncomfortable.
- (b) Mr Craig would turn up to work without being fully dressed and ask Ms MacGregor to help him put on his tie, or do up his cufflinks. She says that the level of physical contact, given the background, made her extremely uncomfortable.
- (c) Mr Craig was often looking for excuses to be alone with her, such as asking her to go back to the office after late meetings (for example, at 10.30 pm or 11.00 pm), or asking her to go into work on weekends and wanting to pick her up rather than let her drive.
- (d) Mr Craig continued to require her to stay in the same motels or hotels as he did, often walking into her room without knocking. She refers to

one occasion, when she was having an afternoon nap, when Mr Craig insisted on using the phone in her motel unit although there was no reason why he could not have used his own phone.

- (e) Mr Craig would expect her to talk to him by phone late at night in order to relax him so that he could go to sleep.
- (f) Relatively frequently Mr Craig would ask to go with Ms MacGregor when she took breaks, including one occasion when she went clothes shopping and he wished to advise her on what she bought, an event which Ms MacGregor says she found "very difficult".
- (g) Mr Craig would ask Ms MacGregor to attend social gatherings which, given her role, she did not need to attend, and would ask her to accompany him while he was having his hair cut, something else which she considered unnecessary.
- (h) "Debrief" sessions or requests became more frequent with Mr Craig wanting to spend more and more time with her, in her view because he wanted to have her company rather than their being any need to deal with work matters.
- (i) Mr Craig "became grumpy and upset with her" when she told him he should be talking to his wife about a personal issue and that he said things to make her feel guilty about leaving him to go home. She regarded that type of behaviour as manipulative and said that Mr Craig used it on a regular basis.
- (j) On one occasion Mr Craig asked her to fill in a personal health questionnaire for him and refused her request that he should do it himself when it came to talking about sexual matters. Instead, he went into details with her about his sexual relationship with his wife. Ms MacGregor says the discussion was clearly inappropriate and unwelcome and made her feel awkward and uncomfortable.

- (k) Mr Craig expected her to travel with him at all times and that he refused to provide or allow her to take alternative transport. She accepted that this was in part because she needed to brief him on work matters but said he made it clear that he wanted to spend time with her whenever he could.
- (l) Mr Craig had curtains installed in her office and that he would close them whenever they were meeting or when Ms MacGregor was giving him a massage, making her feel extremely uncomfortable.

[117] Ms MacGregor complained that Mr Craig's comments to her became more direct and distasteful, occurring probably around once every three weeks or so. She said sometimes she would respond to the comments or express disapproval in some way, and at other times she would just sit in shock and say nothing.

*Mr Craig's response to Ms MacGregor's evidence*

[118] Although Mr Craig acknowledged there was an inappropriate reference to his physical attraction to Ms MacGregor in a letter dated 24 December 2013, he denied that during late 2012 and in 2013 his comments and behaviour became more personal, sexually suggestive and at times romantic. Mr Craig's position was that there was no question that Ms MacGregor and he maintained a very close working relationship, partly as a consequence of the nature of Ms MacGregor's role. He said this was evident from written exchanges of various sorts between Ms MacGregor and himself, but he regarded it as unfortunate that Ms MacGregor had endeavoured to put an unsubstantiated slant on those exchanges to support her allegations. Mr Craig said many written communications between them testified to the fact that, in addition to the working relationship which had developed, they took each other into personal confidences at times. Mr Craig said that the use of expressions like "you are wonderful" and acronyms for that and other terms of affection were used mutually.

[119] Mr Craig said that he suffers from a chronic condition known as Ankylosing Spondylitis that results in serious and often debilitating back pain. He said Ms MacGregor is something of an amateur masseuse and that, on occasion, she had the use of a massage table and gave massages to friends and family. Mr Craig said

that Ms MacGregor offered to massage Mr Craig's back of her own volition and, although he was somewhat reluctant and sceptical on the first occasion, Mr Craig agreed. He pointed to email and text exchanges identifying that the massages were freely offered by Ms MacGregor.

[120] Mr Craig denied that the word "debrief" had become code for spending time with Ms MacGregor discussing personal matters, being comforted by her or by being massaged. He said that debriefs were a discussion that took place after any media or public event for the purpose of considering what could be learned and built upon. The discussions usually took place in the car when driving back from the venue and became more frequent as the 2014 election neared. Mr Craig said he did remember a debrief at Ms MacGregor's flat but accepted she would often call him for a telephone discussion after she had listened to a radio interview.

[121] Mr Craig said that Ms MacGregor never complained to him or any other Conservative Party manager about suffering confusion or stress. He described her communications with him as affectionate and encouraging.

[122] Regarding the complaints about accommodation and sleeping arrangements, Mr Craig said that he would never enter a room without first knocking at the door or being invited in, and he would never spontaneously turn up at a flat or house without first arranging it with the owner or occupier. He explained that, on the occasion on which he used Ms MacGregor's phone for a media interview while in her motel room, Mr Craig said that it had been arranged that he would make a call for a media interview using Ms MacGregor's phone. At the appointed time, Mr Craig knocked on Ms MacGregor's door (which was already ajar) and opened the door fully. Mr Craig noticed that Ms MacGregor, who was standing by the bed, had been startled and he apologised for giving her a fright. The door remained open throughout the call and there were other team members in the hallway.

[123] Mr Craig recalled one occasion on which Ms MacGregor used the apartment at his offices to sleep during the day and Mr Craig had to wake her in order to get to an event. He said he knocked on the bedroom door and called out her name but did not go in. Mr Craig said that curtains were installed in all upstairs offices primarily to

ensure privacy of sensitive campaign information and that the curtains were closed at night, regardless of which team members were working late or for whatever reasons.

[124] Mr Craig denied the assertion by Ms MacGregor that he arranged for her to travel with him, rather than take alternative transport, merely because he wanted to spend time with her whenever he could. He insisted that travelling together was standard operating procedure and he adopted it with other party employees as well.

[125] Mr Craig said, in respect of the health questionnaire, that he was unaware that it would be so detailed and he apologised and completed the "sex life questions" himself later in the day. I do not accept that explanation: Mr Craig's view was that he had a special relationship with Ms MacGregor that enabled them to share intimate information with each other. Ms MacGregor's allegation is consistent with that view. I accept she found Mr Craig's request offensive.

[126] Mr Craig acknowledged that there were people in the Conservative Party who wished him to replace Ms MacGregor as press secretary and that her performance was "patchy at times." However, Mr Craig said he did not remember any conversation in which he suggested getting somebody else to do Ms MacGregor's job. Mr Craig said he did not dispute that Ms MacGregor's mental health had begun to decline significantly around May/June 2014. He said he raised it formally with her in June and then sent an email dated 17 June 2014 setting out the issues discussed. Mr Craig denied, however, that either he or Centurion might have any responsibility for Ms MacGregor's health issues.

#### *Other significant correspondence in 2012 and 2013*

[127] Both Mr Craig and Ms MacGregor acknowledged the relevance of exchanges of written material between them – in the form of cards, texts and letters – as evidence of the view each of them had of the relationship at various times. Before explaining my findings on Ms MacGregor's claims about the relationship in 2012 and 2013, I refer to the other significant pieces of correspondence. There is not as much evidence of text messages during this period as there is of the exchanges in 2011.

[128] On 9 July 2012 Ms MacGregor sent a text to Mr Craig in which she said:

You are so wonderful :) thank you heaps :) I'm writing you a letter.

The text is plainly in response to something Mr Craig did or said but the evidence did not reveal what it was. Mr Craig said in evidence that he no longer had the letter Ms MacGregor sent him subsequently but he remembered it reasonably well. He described it as very heartfelt and said it expressed in glowing terms Ms MacGregor's appreciation of his support and friendship. He said it included references to Ms MacGregor's boyfriend and how she was positive about it working out for her. He described it as being "highly affectionate in a similar vein to my letters that I had sent her."

[129] Ms MacGregor denied writing that or any other personal letter to Mr Craig. Beyond the reference in her 9 July 2012 text message to writing Mr Craig a letter, there is no evidence to corroborate Mr Craig's claim that she did so. I am satisfied that, if Ms MacGregor did write to Mr Craig in positive terms around that time, her letter would have been confined to expressing her appreciation for his friendship and continued support of her in her role. Given Mr Craig's acknowledgement that Ms MacGregor was positive about the future of her relationship with her boyfriend in July 2012, and taking account of her evidence overall, it is highly unlikely that Ms MacGregor would have expressed any romantic or sexual interest in Mr Craig after 2011.

*(i) The 22 October 2012 letter*

[130] On 22 October 2012, Mr Craig prepared a third letter to Ms MacGregor, again marked "ABSOLUTELY PRIVATE AND CONFIDENTIAL". The letter addresses personal matters, including difficulties which had apparently arisen between Ms MacGregor and her boyfriend by that time. Mr Craig referred to his continuing affection for Ms MacGregor and his fondness for her company, but the letter does not contain the same type of overtly sexual references or innuendo that characterises the February 2012 letter. Ms MacGregor said she found Mr Craig's observations about her personal relationships with others intrusive, referring to this letter as an example.



[131] I have found a Christmas card which Ms MacGregor gave Mr Craig at the end of 2012 instructive evidence that they shared a close personal relationship throughout 2012. The note inside the card reads:

It has been a pleasure, and a real honour working with you over the past year.  
You have become much more than a boss –  
You are a dear friend, a mentor, and a man I have great respect for.  
I deeply value your friendship.  
Colin, you are consistently proving your strength of character. You are a man of your word. You have integrity. You have a big heart and you genuinely care for people.  
I love how you see life through more than your natural eyes - you see much deeper, and you act on what you see with your spirit. Living and seeing life more fully in this way in light of eternity is rare, and wonderful.  
I have great respect for your wisdom, your determination, your strength, your intellect, your can do attitude, your gentleness, kindness and self-control.  
As I ponder your qualities I can clearly see so many spiritual fruits – of the Holy Spirit – in your life. This is testament to your decision to follow Christ fully, with everything you are.  
You have won my deepest respect.  
I am with you and I have faith in your ability to make a valuable different in New Zealand.  
With love, Rachel

[132] This note establishes that, at the end of 2012, Ms MacGregor continued to hold Mr Craig in high regard for what she perceived to be his personal qualities and for his performance and potential as a political leader. The effusive nature of Ms MacGregor's praise of Mr Craig is inconsistent with her claim that from the time of the 2011 election she lost trust in Mr Craig and that his behaviour towards her "worsened" during 2012. Mr Craig gave Ms MacGregor a gold charm, for which he paid \$369, as a Christmas present. She did not complain that the gift was inappropriate.

[133] In a card Mr Craig wrote for Ms MacGregor's birthday on 15 June 2013 he said, "Of course, a card can never say how much you mean to me" and noted that Ms MacGregor brought "sunshine, freedom and beauty" to his life. It was signed off: "Always know that you have my support and friendship and the rest". Ms MacGregor said in evidence that she particularly disliked the phrase "... and the rest" because, in the light of all she said had occurred and was continuing to occur, it seemed to suggest clearly that Mr Craig still had romantic and sexual feelings for her. That seemed to

me to be a somewhat contrived response, although I do not doubt that Mr Craig felt that way about Ms MacGregor at that time.

[134] I accept also that Mr Craig maintained a continuing sexual interest in Ms MacGregor at the end of 2013, as may be inferred from the letter he wrote to her then.

(ii) *The 24 December 2013 letter*

[135] The letter dated 24 December 2013 that Mr Craig gave Ms MacGregor differs from those sent in February and October 2012 in that it refers more overtly to work-related matters. In that respect, Mr Craig no doubt considered it appropriate to end the year with an appraisal of Ms MacGregor's performance in her role and to consider some goals for the year ahead. He also used it, however, to convey a continuing romantic and sexual attraction to her. Among other things, Mr Craig said:

I need to say for my part, you are always free Rach. If there comes a time when you need to say goodbye to politics, and/or to me, then you are free to do so and I will understand. I will handle it somehow.

**What I want in 2014**

So what I really want is .... OK no I can't really say what I want .... So I will say what I reasonably hope for.

I hope that you will be by my side through the campaign in 2014 and that you will be part of the victory celebrations after the election.

I hope that we will continue our close, co-operative and effective working relationship.

I hope that you will tidy up the loose ends of your life so that you are more effective in the organizational aspects of your role....

Mr Craig said in evidence that his hope that Ms MacGregor would "tidy up the loose ends" of her life referred to financial issues.

[136] Included in the letter were three poems, the first of which assumed some significance in the aftermath to Ms MacGregor's resignation in September 2014. Mr Craig said:

## A Poem

Ok, well I have decided to share a little glimpse of the "Creative Colin". Here is a very short poem.

### *Two of Me*

*There is only one of me it's true  
but I wish this were not the case  
because I wish that I could have you*

*If instead of one man, I was two  
that would be one for all the others  
And one of me, for you.*

Another poem followed. Under a heading "When you need me", Mr Craig said:

Okay I wrote section [sic] here that on review I deleted. Suffice to say Rachel that I still feel and think the same as that which I have previously written. Nothing has changed.

When you need me you just need to ask. ☺

[137] The letter then addresses Ms MacGregor's health. It contains this passage:

My third thought is that working with you on your health would bring us closer together. On the one hand I would love that - I can never get enough of you ☺. On the other hand the closer we get the harder it gets to avoid intimacy. Like always this is a very honest letter!!

[138] There is then a section headed "YAWAB" which is in the form of a poem. The first stanza refers to ways in which Mr Craig considers Ms MacGregor to be wonderful. The second stanza has greater significance in the context of this case. It reads:

**Beautiful:** (please skip this section if inappropriate)

You are beautiful because your eyes are lovely

You are beautiful because your [sic] look unbelievably good in your new dress.

You are beautiful because you are fearfully and wonderfully made.

You are beautiful because your lips are so amazing to kiss.

You are beautiful because your skin is so soft.

You are beautiful because you have the most perfect .....

(LOL .. Ok I deleted a couple of lines and stopped this section.) Please know that you are beautiful.

This is followed by several paragraphs headed "Grateful prayers". There is a summary in which Mr Craig said:

Nothing has changed in how I think of you or feel toward you, you are precious beyond words and I am always here for you.

The letter concludes:

As usual I have got to the end and no words are going to adequately sum up what you mean to me.

I hope that this letter has encouraged you, and has made you feel precious and valued.

I pray that every good thing, that every blessing, and that life in all its fullness will be yours.

Love

C

[139] At 5.53 pm on Christmas Eve, Mr Craig sent Ms MacGregor a text which I infer refers to the letter just quoted:

Hello Rach, hope youre having a great day :). A modest Christmas present and one of my famous letters is on your desk at work, waiting for you :).

[140] Ms MacGregor replied five minutes later:

I've just got it !!!!! Thank you soo so much !!!!!

Ms MacGregor explained that the present was an edition of Kinfolk magazine, a quarterly lifestyle publication she particularly liked, and that her thanks referred to the gift, as the next text she sent made clear. I accept that is probably correct, but I acknowledge that Mr Craig is unlikely to have interpreted the response as being confined to the gift.

[141] In evidence, Ms MacGregor said she did not appreciate Mr Craig's wish to buy her a "beautiful and significant" present; his comment that she was "more than a friend"; and his statement that he could not say what he really wanted in 2014, the clear inference being that he wanted a romantic relationship with her. She was critical of the three poems in Mr Craig's letter, including the one saying he wished he could "have her" and that he wished he was two men, one of them being for her. Ms MacGregor pointed to the poem describing her as "wonderful" and "beautiful", emphasising the invitation to her to skip the second section if it was "inappropriate",

and his praise of her physical attributes, ending with the statement that she was "beautiful because [she has] the most perfect ...." Ms MacGregor said that that line was particularly upsetting because it repeated a statement that Mr Craig made to her about her breasts during the 2011 election night incident, and that was the link that Mr Craig clearly intended her to draw. Ms MacGregor also disliked Mr Craig saying that he would love to work with her on her health, so it would bring them closer together and because he could never get enough of her, and his comment that he recognised that the closer he got the harder it would be to avoid intimacy. Mr Craig said he was a creative writer and that the poems included in the letter of 24 December 2013 were not all written for her and not intended to be personal.

[142] I accept Ms MacGregor's evidence that, although she did not say so at the time, she regarded much of Mr Craig's letter of 24 December 2013 as inappropriate and offensive. Regarding the third poem with the second section headed "Beautiful", Mr Craig initially suggested that the letter had been misread and that it merely listed Ms MacGregor's positive attributes. As he perceived Ms MacGregor to be someone who had struggled with her own self-image and worth, Mr Craig said he was always trying to be encouraging and that the letter expressed the hope that it would make her feel "precious and valued". Under cross-examination, however, he acknowledged that the way in which he ended the third poem was inappropriate. I consider the three poems to have been intended to reinforce in Ms MacGregor's mind that, over two years after the single intimate encounter in 2011, Mr Craig continued to be romantically interested in and sexually attracted to her. I accept she did not welcome that information and that the third poem was particularly offensive for her.

[143] There is no evidence that, apart from the text acknowledging the Christmas gift, Ms MacGregor did or said anything to indicate that Mr Craig's obvious feelings for her were reciprocated.

#### **Ms MacGregor's financial position in early 2014**

[144] In February 2014, Mr Craig's accounting practice took over responsibility for preparing Ms MacGregor's accounts and tax returns. Mr Craig prepared monthly and weekly budgets showing that she was conducting her personal affairs with a spending

deficit of [REDACTED]. A statement showed that her total indebtedness at that stage for credit card and bank advances, unpaid GST and unpaid income tax [REDACTED]. Mr Craig also prepared suggested weekly budgets showing reduced expenditure which, if implemented, would mean that there would be no surplus but also no deficit from her net income after tax. A financial plan was designed to address Ms MacGregor's tax liabilities and other debt servicing.

[145] On 8 February 2014, one of Mr Craig's group of companies (Centurion Utilities Limited) entered into a loan agreement with Ms MacGregor for an advance of \$18,990.59 (the February 2014 loan). It is necessary to set out the terms of the agreement in full because part of Mr Craig's claim against Mr Slater alleges he made defamatory statements about the financial aspects of the settlement of Ms MacGregor's claims against Mr Craig in May 2015. They are also material to Ms MacGregor's allegation that she was trapped by the financial arrangements into remaining employed by Mr Craig. The terms of the agreement were:

4.0 Terms

It is agreed as follows:

- 4.1 The Lender lends to the borrower the amount as specified above.
  - 4.2 The borrower shall make payments to reduce the loan balance at their discretion.
  - 4.3 Additionally the lender may withhold up to 60% of any payment for contract services performed by the borrower as repayments.
  - 4.4 The lender may require the borrower to prioritise their work commitments to undertake the lenders work.
  - 4.5 The lender may at it's [sic] discretion securitise this loan against the assets of the borrower.
  - 4.6 The loan is repayable on demand and the borrower has three weeks to arrange for repayment once the demand is made in writing.
  - 4.7 The Borrower shall cancel personal credit cards and apply for no further credit facilities.
  - 4.8 The Borrower will work on living to a budget to ensure no further progression into debt.
- 5.0 Interest rate
- 5.1 The interest rate of the loan is set at:
    - 0% for the first 6 months
    - 4% for the next 6 months
    - The lenders' unsecured overdraft rate plus 2% thereafter.
    - If in default the interest rate shall be the lender unsecured overdraft rate plus 10%.

[146] Under the heading “Signatures” a narration in fine print reads:

(Both parties in signing acknowledge they have sought legal advice at their discretion prior to signing this agreement if they wished to.)

[147] The advance was used to meet Ms MacGregor's then current credit card debt. Ms MacGregor said in evidence she did not take legal advice about the terms of the loan. She said she did not understand that the terms were that she could be required to repay it on demand and that after such demand she had three weeks to repay the money. Her evidence was that, if she had realised that, she would not have signed the agreement because it would have tied her to working for Mr Craig.

### **2014 – events up to 18 September**

[148] 2014 was an election year. Mr Craig maintained a serious commitment to leading the Conservative Party in the hope of securing seats in Parliament. It is clear on the evidence that he worked long hours and travelled extensively in pursuit of this goal. It is also clear that he expected Ms MacGregor to display the same level of commitment and to work flexibly to meet the demands created by the many requests he received to address meetings and engage in news media interviews. That necessarily involved work at weekends and in the evenings. Although the need for flexibility existed throughout 2012 and 2013, there was an increased level of demand by Mr Craig for Ms MacGregor's assistance in the second and third quarters of 2014 as the election approached.

[149] In late May or early June 2014, Mr Craig and Ms MacGregor travelled to Whanganui for a meeting with representatives of the Grey Power organisation. The trip required Mr Craig and Ms MacGregor to fly to Wellington, drive to Whanganui, return by car to Wellington and then fly back to Auckland. Ms MacGregor said it was a very long day and she was very tired. She took the opportunity of otherwise uncommitted time in Mr Craig's presence to raise with him her complaints about the demands he was making on her time. Mr Craig said that there was no such discussion during that trip and that Ms MacGregor's rate of pay had been settled and was not raised.

[150] Taking account of the matters addressed by Mr Craig in an email to Ms MacGregor on 17 June 2014, and in a letter dated 18 June 2014, I find it more probable than not that Ms MacGregor did raise pay and other concerns with Mr Craig on the Whanganui trip. Ms MacGregor alleged also that, during a trip to Hamilton for the Field Days, Mr Craig and she had argued about the impositions he had placed on her.

[151] Ms MacGregor thought that it was probable that she had not discussed matters related to her conditions of her employment in front of Ms Angela Storr, who was also on the trip and certainly in the car with them when they travelled back to Auckland. Ms Storr said, however, that it was apparent that Ms MacGregor was not happy with the prospect that, after attending the Field Days the day before, staying overnight in Hamilton and then returning to Auckland the next day, she should then be required to accompany Mr Craig to a television studio while he was interviewed. Ms Storr said that, sitting in the back seat of the car beside Ms MacGregor, she noticed that Ms MacGregor was texting her boyfriend to say that Mr Craig was yelling at her, a statement which Ms Storr said was completely untrue. I accept Ms Storr's evidence. I find that it is likely that Ms MacGregor did not wish to go into the television studio with Mr Craig and that she embellished the anxious tone of the message to her boyfriend so that he would be persuaded to meet her and give her a ride home.

[152] Ms Storr had first worked for Mr Craig as Body Corporate Manager for Centurion in 2005. She acknowledged that since then, her husband and she had become personal friends to both Mr and Mrs Craig whom she described as "kind, generous and supportive". From the beginning of 2012, Ms Storr took up a role as Membership Manager with the Conservative Party. She described those working out of Centurion's offices on behalf of the Conservative Party, which included Ms MacGregor, as "a tight knit team". Ms Storr said that she worked closely with both Ms MacGregor and Ms Rankin in the lead-up to the 2014 general election and her time with Ms MacGregor increased as the election approached. She said that Ms MacGregor was very possessive of Mr Craig's time, and devoted herself to "grooming his image and public presentation".



*Mr Craig's email of 17 June 2014*

[153] It is sufficient for present purposes to note that Mr Craig's email of 17 June 2014 followed two days after the Field Days trip. The subject line of the email reads, "Discussion re work hours etc." Although Mr Craig described the first issue to be addressed as Ms MacGregor's health and wellbeing, it is reasonable to infer from the tone and content that the focus of the letter was on those matters so far as they affected her ability to meet his needs and interests. Mr Craig said that recent comments by Ms MacGregor over the "last couple of weeks", his own observations and those of others signalled a serious concern and that her personal standard of presentation had dropped. Mr Craig said that he needed to confirm that Ms MacGregor was physically and mentally "okay" and that if she was not going to be able manage the commitments of a campaign then all parties needed to know in order to plan for the next three months.

[154] Continuing to address his interests, rather than those of Ms MacGregor, Mr Craig said the second concern was Ms MacGregor's ability to work the hours necessitated by the campaign. He noted the total number of hours to cover the basic functions of media management and public appearance management were now "a much bigger commitment and growing." He said that the additional requirement to work long hours had always been anticipated and that it was agreed that the commitment was now more than Ms MacGregor could manage. I note, however, that Mr Craig made no reference to the guideline of an average of 37 hours per week set out in the employment agreement, nor to Ms MacGregor's entitlement to overtime pay for hours which exceeded that average.

[155] Mr Craig then recorded that he had asked Ms MacGregor to make suggestions about how things could work and that once she responded they could discuss how to manage it. Mr Craig also said that decisions about accommodation and mode of transport were driven by financial and sometimes timing constraints. He made no reference to personal boundaries. In response to Ms MacGregor's having raised an issue of his health and safety obligations relative to her status as a contractor rather than as an employee, Mr Craig reminded Ms MacGregor that she was given both

options and elected to be a contractor. He said that if she wanted to revisit that issue then she should tell him.

*Mr Craig's letter of 18 June 2014*

[156] Mr Craig then wrote Ms MacGregor a letter dated 18 June 2014, again headed "ABSOLUTELY PRIVATE AND CONFIDENTIAL". Although it purports to address more directly what Mr Craig described as "the personal/friendship relationship that we have" and to be not a work discussion but a personal one, it is apparent nevertheless that he approached the letter from his perspective as someone who had engaged Ms MacGregor to perform professional services and that he felt he should respond to Ms MacGregor's criticisms of the demands Mr Craig was placing upon her. In a section of the letter headed "My Thoughts", Mr Craig addressed issues of his integrity, alleged selfishness and taking care of Ms MacGregor which it seems she had raised with him. He stated that, although he did not claim to be perfect, he was regarded as a man of honour and integrity; that he did not consider himself to be selfish and that others did not.

[157] Mr Craig then listed the matters which he said demonstrated that he cared about Ms MacGregor and that he had always tried to help her out when he could. These included assisting her with her finances, as well as making the loan to assist with her credit card debt "at no interest cost"; paying for meals; never judging her harshly for mistakes or errors; defending her against critics; and being available as a friend to talk to. Mr Craig then said:

I would like you to rethink your comments and viewpoint. I know who I am, and I am known well by others, and your current thinking is at odds with the reality.

It concerns me that doubts and suspicions have taken hold of you.

I would like to continue to be your friend but friendship is a gift without obligations and you have always been at liberty to end ours at any time.

[158] Mr Craig said Ms MacGregor was free to leave the job at any time but that he hoped they would continue their "close, co-operative and effective working relationship." He said that he hoped Ms MacGregor would tidy up the loose ends of her life so that she was more effective in the organisational aspects of her role, that her

health was able to handle the demands of what would be a very busy year. He said he would like to discuss the letter with her and wished her only the best.

*Ms MacGregor's letter of 20 June 2014*

[159] Ms MacGregor replied in a conciliatory letter sent by email on 20 June 2014. She explained to Mr Craig that she considered he had made selfish decisions, rather than saying that he was a selfish person. She gave examples of what she considered to be unreasonable impositions on her and asked him to consider the way his decisions impacted on her wellbeing. She made the point that Mr Craig had undertaken to do certain things, or at least raised the possibility of it, but had not followed through on them. The most significant of those was Mr Craig telling her that he had been thinking of gifting her the car that she was using for work purposes, but then never taking that matter any further. Ms MacGregor said she would rather be told that he was not going to do what he had said, and be disappointed, rather than be left "hanging".

[160] Ms MacGregor concluded the letter by saying:

Colin I appreciate your friendship. I also appreciate your warm buoyant personality, jovial nature, and friendly disposition. You are intelligent and I appreciate the stimulating, thought provoking discussions we often have. I too hope we will continue the co-operative and effective working relationship we have built, and that through our discussions we can improve it.

Ms MacGregor said that she drafted that letter carefully with the assistance of her boyfriend because she really needed to keep her job and did not want to offend Mr Craig. I accept that evidence. Her response is measured and carefully drafted. It is evident from the tone that, although Ms MacGregor did not want to lose her job at that point, she was less enamoured of it than she was in 2012 and 2013.

[161] About three months before the 2014 election, Mr Craig offered Ms MacGregor free accommodation in the apartment above the Conservative Party's offices. Ms MacGregor said she refused, although she would have welcomed not having to pay rent, at least in part because she was worried that Mr Craig would enter the apartment at any time and she did not trust him not to appear unannounced. Mr Craig

said that the offer was motivated solely by his concern for Ms MacGregor's financial position. I accept that was probably the case.

[162] There is one other matter that assumed some prominence in discussions between Conservative Party members and Mr Williams; it later became the subject of news media speculation and comment. About two weeks before the election, when Ms MacGregor sent a text message to Mr Craig to ask him how he had slept, Mr Craig said that he had slept well because he had applied his "sleep trick". That was apparently a reference to Mr Craig imagining himself falling asleep with his head on Ms MacGregor's lap. That had apparently occurred on one occasion during the 2011 election campaign. Ms MacGregor said the reference made her feel extremely uncomfortable whenever Mr Craig mentioned it; she said she told him something to the effect that she did not think Mr Craig's wife would like him thinking like that. In her response to his reference to it in the text, Ms MacGregor said that it was probably unwise.

#### *Ms MacGregor's workload*

[163] Ms Storr's evidence was that, by the beginning of 2013, it was apparent to her that Ms MacGregor was overwhelmed by the extent of her duties. Ms Storr said she started carrying more of Ms MacGregor's load regarding emails, booking appointments and making travel arrangements. She felt she had to cover for Ms MacGregor more and more as time went on to avoid mistakes caused by poor planning.

[164] Ms Beverly Adair-Beets corroborated Ms Storr's observations of Ms MacGregor's attitude towards Mr Craig. Ms Adair-Beets was initially engaged by Ms Rankin in mid-2014, to assist the Conservative Party and Mr Craig with public relations. In the four months between June 2014 and Ms MacGregor's resignation on 18 September 2014, Ms Adair-Beets worked closely with her during what she described as a very intense period. Ms Adair-Beets said Ms MacGregor shared confidences with her. Her impression was that Ms MacGregor believed she held special status or power over Mr Craig and could dictate what she should get or be paid. Ms Adair-Beets said that it was clear Ms MacGregor cared about Mr Craig and was

personally interested in him, but she said she only ever observed Mr Craig treating Ms MacGregor kindly and fairly and never saw any inappropriate behaviour by Mr Craig during the time she worked for the Conservative Party, which was up to August 2015. Neither Ms Storr nor Ms Adair-Beets received any complaint from Ms MacGregor about any inappropriate sexual behaviour towards her by Mr Craig.

[165] Saying that she had been required to spend a considerable amount of time together with Mr Craig and Ms MacGregor, Ms Storr described a conversation she had with Ms Christine Rankin, the Party's chief executive, and Mr Craig in either late July or early August 2014 in which Ms Rankin and she told Mr Craig that they considered Ms MacGregor was infatuated with him. Ms Storr said that Ms MacGregor had told her that the best thing that had ever happened to her was to be working for Mr Craig, that she had a very close relationship with both Mr and Mrs Craig, and that she had become "part of their family". Ms MacGregor had explained how the help she had received from Mr and Mrs Craig financially and with her budgeting had helped change her life for the better.

[166] It was suggested by Mr Henry that Ms Storr and Ms Adair-Beets were not wholly objective witnesses because of their positions as Conservative Party employees and people who held Mr Craig in high regard. I do not accept that assessment. I noted that they were both genuinely upset by Mr Henry's proposition in cross-examination of each of them that they were besotted with Mr Craig and partisan witnesses, and I accept that that was not the case. Although Ms Storr and Ms Adair-Beets acknowledged that they liked and respected Mr Craig, they impressed me as being intelligent, capable and independent people who answered the questions put to them firmly but fairly. Each of them made concessions under cross-examination in an objective and balanced manner. I am satisfied that neither of them is the type of person who would attempt to mislead the Court because of misplaced loyalty to Mr Craig. I also accept that their shared opinion that Ms MacGregor was infatuated with Mr Craig as late in the relationship as mid-2014 was genuine. For reasons given below, however, I consider they were mistaken.

### **Comments and findings on Mr Craig's and Ms MacGregor's relationship in 2012, 2013 and 2014**

[167] There is less evidence of text messages exchanged by Mr Craig and Ms MacGregor during 2012, 2013 and 2014 than there is of their exchanges in 2011. I have referred to the text messages and correspondence during that period which I regard to be significant and helpful. I accept that, because Ms MacGregor was subpoenaed to give evidence as a non-party witness in the proceeding, she had no control or influence over the evidence led by or on behalf of the defendants, or over Mr Craig's cross-examination by Mr Henry. I do not draw any adverse inference, therefore, from the absence of other corroborating documents. It was helpful, however, to have in evidence material from which it was possible to draw inferences about Mr Craig's and Ms MacGregor's views of each other and their relationship at the end of each year and the course of the relationship. I regard as particularly pertinent Ms MacGregor's note which accompanied her 2012 Christmas card and Mr Craig's letter of 24 December 2013.

[168] I have considered also the evidence reflecting exchanges between Mr Craig and Ms MacGregor over Ms MacGregor's financial position and the efforts made by Mr Craig to assist her in early 2014. Ms MacGregor did not complain at the time that Mr Craig's assistance was other than helpful and properly motivated.

[169] My findings on Ms MacGregor's evidence about what occurred in 2012 and 2013, and how she viewed her relationship with Mr Craig and his behaviour at that time, are influenced by the way in which Ms MacGregor conducted herself in the witness box. She was at times openly hostile to Mr Craig, not only when she was under cross-examination by him but also when she was being questioned by Mr Henry and when I put questions to her on relevant matters on which I sought clarification or further information. It was evident that Ms MacGregor was annoyed, if not angered, by the continued intrusion on her life through having been summoned to give evidence in this proceeding. It is not difficult to understand why.

[170] Ms MacGregor became a pawn in the political manoeuvring by Mr Williams, Mr Stringer and others in circumstances where she had nothing to gain and everything to lose from the continued public speculation about her relationship with Mr Craig.

Not only was she forced into personal litigation over Mr Craig's breach of the May 2015 settlement agreement but, by the time she gave evidence in this proceeding, she had previously been dragged into litigation between Mr Craig and his political enemies in which her evidence played a prominent part. It takes little imagination to understand how distressing it was for her to be required to give evidence before a jury at the trial of Mr Williams's defamation action against Mr Craig in 2016, and then to be subjected to further public questioning in this case — another proceeding in which she had no stake in the outcome — on very personal matters she wished only to put behind her. Mr Craig has represented himself in this proceeding. Although his conduct in the hearing was entirely proper, I understand that Ms MacGregor's experience in the witness box was made more distasteful because she was required to answer questions put to her by Mr Craig himself.

[171] I conclude that the matters with which this proceeding is concerned, particularly from the time of Ms MacGregor's resignation through to her appearance as a witness in this case, affected her perspective in recounting past events and coloured her evidence. I do not think she set out to mislead the Court, but I am satisfied that her antipathy towards Mr Craig led her to a faulty recollection of past events. I find that Ms MacGregor now sees aspects of Mr Craig's conduct in a different light, not only because of her post-resignation experiences but also through the influence of discussing the events with other people. She acknowledged in evidence that she had gone through a process of unravelling what she called Mr Craig's manipulation of her and "figuring out what had actually been going on." It would be unrealistic to expect Ms MacGregor to be a wholly objective witness in this proceeding, so I do not draw any adverse inference against her from her refusal to acknowledge in evidence the romantic elements to some of her communications with Mr Craig in 2011, despite the compelling implications to the contrary.

[172] I accept Ms MacGregor's evidence about Mr Craig's unwanted intrusions upon her personal time and space, such as making excessive demands on her availability for debriefing, receiving late-night phone calls, walking into her motel room unannounced and attending social gatherings which did not appeal to her. She made at least some of those points in her discussions and correspondence with him in June 2014 when she referred to his having made selfish decisions. I find that the circumstances that caused

Ms MacGregor's stress and confusion, and a sense of being locked into a working relationship about which she had real misgivings, occurred not in 2012 but in the latter part of 2013 and, particularly, in 2014, not earlier.

[173] I have said that I found the evidence of Ms Adair-Beets and Ms Storr to be genuine. By that I mean that I accept their narrative of events, unless otherwise indicated, and that the opinions they expressed were genuinely held. Opinion evidence is not usually admissible in court proceedings unless given by an expert or to explain a fact.<sup>12</sup> In this case, opinions expressed by Ms Adair-Beets and Ms MacGregor were not challenged as being inadmissible and I have regarded them as being advanced "to enable the witness to communicate, or the [Court] to understand what the witness saw, heard, or otherwise perceived."<sup>13</sup> For the most part, it has been helpful. In forming their views, however, those witnesses did not have the benefit of hearing days of oral evidence and sifting through hundreds of pages of letters and text messages, and other documentary exhibits. They were unaware of the many expressions of Mr Craig's romantic and sexual interest in Ms MacGregor and his private overtures to her over more than two years. They were also unaware of the absence of any evidence in emails or text messages that Ms MacGregor had any reciprocal interest of that kind in Mr Craig, apart from a few text messages around the 2011 election. Ms MacGregor acknowledged that Mr Craig and she shared an emotional and spiritual connection; it is difficult to say just when Ms MacGregor's side of it began to wane but it was probably in the latter half of 2013 and certainly by June 2014. I accept that Ms MacGregor placed great store in her prominent role as Mr Craig's media adviser; it may be that she considered she was in a position to manipulate him by exploiting what she knew to be his private feelings for her but she was not cross-examined on that proposition. I consider, however, that, in 2014, Ms Storr and Ms Adair-Beets were wrong in their view that Ms MacGregor had a romantic infatuation for Mr Craig. I consider that they mistook her enthusiasm for her position of influence over Mr Craig on matters of his appearance and in his dealings with the news media for inappropriate affection for him.

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<sup>12</sup> Evidence Act 2006, ss 23, 24 and 25.

<sup>13</sup> Section 24.



[174] While I accept that Mr Craig's demands of the kind mentioned at [116] were unwanted by Ms MacGregor, I am not persuaded that they were merely manifestations of his sexual interest in her. Rather, they were a product of his single-minded and, at times, selfish determination to achieve political success. I accept Mr Craig's explanation that what Ms MacGregor complained about as excessive demands on her time were motivated by what he saw as the appropriate demands of her role. That does not mean, however, that they were reasonable when judged by the arrangements made in May 2012 for Ms MacGregor to work an average of 37 hours per week and that, as a contractor, she had no entitlement to sick leave or paid holidays.

[175] Having failed to gain a Parliamentary seat in 2011, Mr Craig was determined that the Conservative Party should do better in 2014. He struck me as being extremely committed to what he believed to be the best interests of the Party and to the achievement of his political goals. I found him to be a man who was not only single-minded but also extremely confident in his own judgment and in the correctness of his views. This led him to expect that those around him, like Ms MacGregor, would also demonstrate that they were wholly committed to the success of the Conservative Party and that they would be prepared to work long hours and make significant personal sacrifices in that cause. I consider also that, at least until early 2014, Mr Craig's romantic attraction to Ms MacGregor clouded his judgment about her ability to fulfil what had become increasingly demanding dual roles of being his personal assistant and his media relations adviser and manager.

[176] In 2014, Ms MacGregor's dual roles became increasingly demanding. Ms Storr said that it was apparent to her that Ms MacGregor was overwhelmed and that it became necessary, by mid-2014, for Ms Adair-Beets to carry more of her workload with regard to email correspondence, booking appointments and making travel arrangements. Both Ms Storr and Ms Adair-Beets were concerned about Ms MacGregor's mental health and general wellbeing and corroborated Ms MacGregor's evidence that she was required to take time off due to stress. I am satisfied from the evidence of Mr Craig, Ms Storr, Ms Adair-Beets and Ms MacGregor herself that from some time in the first half of 2014, and certainly by about May of that year, Ms MacGregor was under considerable strain in managing her roles. It is

evident that she was less successful than she might have hoped to be in securing Mr Craig's agreement to a higher rate of pay during the electoral campaign.

[177] I conclude that by mid-2014, if not earlier, Ms MacGregor had become disaffected. The emails Ms MacGregor sent to Mr Craig from time to time about giving him massages indicate that she was willing to offer and provide those services, at least in 2011 and 2012. I accept that towards the end of 2013 and into 2014 Ms MacGregor became less tolerant of that type of personal contact with Mr Craig. I accept also that, in 2014, Ms MacGregor was less able to simply ignore his reminding her of their brief intimate encounter and of his continuing sexual interest in her. By that stage, however, Ms MacGregor was in no position to simply walk away from her roles with the Conservative Party and find work elsewhere.

#### **Ms MacGregor's abrupt resignation – 18 September 2014**

[178] On 18 September 2014, two days before the general election, Ms MacGregor drove with Mr Craig into the Auckland CBD for media interviews. They arrived early. While they were sitting in the car, Ms MacGregor told Mr Craig that she wanted to discuss an increase in her pay for the provision of services during the election campaign. She had raised this issue with Mr Craig several times over the previous three or four months and she said he had always avoided addressing the matter directly. When Mr Craig told Ms MacGregor that they should discuss the issue later in the day, she made it clear that she wished to discuss the issue immediately.

[179] Mr Craig's position was that a rate of \$70 per hour for the election campaign had been agreed and incorporated into her employment agreement and he pointed out that Ms Rankin, the chief executive, was paid \$72.50 an hour. When it became apparent that the matter would not be resolved then and there, Ms MacGregor said that she would not be attending any interviews with Mr Craig and left the car. Ms MacGregor's then boyfriend had parked his car behind them and Ms MacGregor got into it. Mr Craig attended the radio interviews on his own, the last of them being completed around 10.00 am that morning.

[180] In the meantime, Ms MacGregor was telephoned by a political journalist and radio news editor, Mr Barry Soper, who had wanted to get in touch with Mr Craig. Mr Soper noticed that Ms MacGregor was very upset – she was crying – and she told him that she had left the Conservative Party. When Mr Soper asked Ms MacGregor why she had done that, she told him that "Colin is a very manipulative man". Mr Soper said she was very distraught and he advised her to take some advice on her position as she was going to face a lot of questions because of the timing of the election only two days later.

[181] After speaking to Ms MacGregor, Mr Soper tweeted on his Twitter social media account saying that he had just spoken to Mr Craig's long-time press secretary, "a tearful Rachel MacGregor who has resigned saying he's a very manipulative man!" Mr Soper then reported the event several times during that morning on the *Newstalk ZB* radio station. One of the radio items was an interview with Mr Craig. When it was suggested that he had had an inappropriate relationship with Ms MacGregor, he denied it. Mr Soper had earlier told both Ms MacGregor and Mr Craig (off-air) that he was aware of rumours "swirling around" about Ms MacGregor and Mr Craig having an affair. Mr Soper said in evidence that from his relatively limited observations of Mr Craig and Ms MacGregor when they were together, their relationship was one that was "familiar".

[182] It was also said on another radio station, RadioLive, that morning that, among other criticisms she made of Mr Craig, Ms MacGregor had described his behaviour as "un-Christian".

[183] Mr Craig was unaware that Ms MacGregor had resigned until shortly after he left his last meeting that morning. He was approached by a news media representative who informed him that she had done so and asked for Mr Craig's comment. Shortly after midday, Ms MacGregor sent Mr Craig an email formally giving him notice that she was resigning with immediate effect, and saying that she expected to be paid in full, including severance pay, for the past four months' work.

[184] At 12.45 pm, Mr Craig sent Ms MacGregor an email reply, "regretfully" accepting her resignation and thanking her for her "enormous contribution" to the

Party and for all the work she had done. He then expressed concern for her and said he would like to make a time to discuss the matter in the following week. He invited her to bring a support person. Mr Craig said that he would ensure all amounts due to Ms MacGregor were fully paid.

[185] At some time on the day she resigned, Ms MacGregor filed the online complaint with the Human Rights Commission under the Human Rights Act 1993, alleging that she had been sexually harassed by Mr Craig.

*The trip to Napier on 14 September 2014*

[186] Mr Craig attributed Ms MacGregor's conduct at the time she resigned on 18 September 2014 to events which he says occurred on Sunday, 14 September 2014 when they flew to Napier for a public meeting. He said Ms MacGregor had been in a happy mood in the morning and that she suggested a "selfie" and "snuggled in quite close" to Mr Craig before taking the picture. On the flight down Ms MacGregor talked at length about her current boyfriend and why the relationship was not going to work out. Mr Craig said that any discussion with Ms MacGregor about her personal relationships was at her instigation. He said that the conversation was not particularly unusual because she regularly confided in him, but was surprised by her comments, because he had thought the relationship was progressing reasonably well. He was encouraging and supportive of Ms MacGregor and that she said that it was "good to know that at least one person in the world understands me."

[187] Mr Craig said that they were seated together on the flight home to Auckland when Ms MacGregor began a conversation in hushed tones. She told him she believed no one really knew her better than Mr Craig and proposed that she should become more to him than just a press secretary. Mr Craig said he had mixed emotions on hearing Ms MacGregor's proposal, which he thought was in clear breach of the agreement that required her to work in the best interests of his marriage and he felt she should not have made the proposal. He said at the same time he felt a great sadness for Ms MacGregor knowing that she was asking for something that could not be, and did his best to decline the proposal in a way that preserved Ms MacGregor's dignity while still being clear that nothing of the sort could happen. He said he recalled using

the phrase, "not in this lifetime", which he thought may have sounded harsher than he intended, and it was his view that the friendship and working relationship he had with Ms MacGregor "was greatly damaged by this event."

[188] Ms MacGregor denied the conversations and said the suggestion that she would proposition Mr Craig in that way was "ridiculous". She was not cross-examined on the matter by Mr Craig.

[189] If I had accepted that Ms MacGregor implied to Mr Craig that she was interested in a romantic or sexual liaison with him in September 2014, it would have had some effect on my assessment of whether she welcomed Mr Craig's expressions of sexual desire for her in letters given to her in February 2012 and December 2013, and in conversation with her in 2014. I found Mr Craig's evidence about the mid-flight conversation to be unconvincing, however, and I doubt that it is true. First, the proposition alleged to have been made by Ms MacGregor is not consistent with what I have determined to be her lack of any romantic interest in Mr Craig and her disaffection with her role by that time. Second, it is improbable that she would have such a conversation with Mr Craig, a prominent public figure, on a small commercial aircraft with other passengers in very close proximity. Third, the alleged gruff rejection, "not in my lifetime", would be out of character for Mr Craig and inconsistent with his continuing romantic interest in Ms MacGregor. Fourth, Mr Craig's evidence that Ms MacGregor had made a proposal that he considered to be "a breach of the agreement that required her to work in the best interests of his marriage" was contrived and not credible, given his references in the February 2012 and December 2013 letters about how much he would like to have a physical relationship with her. Fifth, bearing in mind the way Mr Craig thought about Ms MacGregor and his apparent view that there was no impediment to his expressing the same kind of sentiment to her, his evidence that his friendship and working relationship with Ms MacGregor was "greatly damaged" by her alleged proposition is also not believable.

*Ms MacGregor's phone call to Mrs Craig on 18 September 2014*

[190] There was a conflict in the evidence of Mrs Craig and Ms MacGregor about a telephone call Ms MacGregor made to Mrs Craig on the morning she resigned.

Mrs Craig says that Ms MacGregor admitted to her that she had been having "emotional affairs" with Mr Craig. The evidence was advanced, as I understand it, to support Mr Craig's allegation that his romantic and sexual overtures to Ms MacGregor were reciprocated. Ms MacGregor said that what she told Mrs Craig was that her husband had been having "an emotional affair" with Ms MacGregor. It is not disputed that Ms MacGregor also told Mrs Craig that her husband and she had kissed on election night in 2011. Mr Craig said in evidence that during their heated conversation in the car over money that Ms MacGregor threatened to tell Mrs Craig about the election night incident. It is probable, therefore, that Ms MacGregor was motivated to call Mrs Craig by vengeance rather than a guilty conscience, so her version seems to be more probable.

[191] In any event, I do not think the point is significant. Even if Mrs Craig's version of the statement is correct, it does not alter my view that although Ms MacGregor may have had a close personal attachment to Mr Craig at least up to the end of 2013, it was not one that involved any romantic or sexual interest after 2011.

*The aftermath of the resignation*

[192] Public opinion polls conducted in the prior few weeks to the 2014 general election had suggested it was possible that the Conservative Party would secure a sufficient number of the party votes cast under the mixed member proportional voting system to reach the five per cent threshold which would have entitled it to seats in the House of Representatives. Given the polling figures for the other political parties, there was a prospect that the Conservative Party might control the balance of power in the new Parliament. In that event, Mr Craig would have had considerable influence in the determination of which major party was able to form a government.

[193] As a political commentator Mr Matthew Hooton said in evidence, Ms MacGregor's resignation only two days before the election and her public descriptions of Mr Craig as "manipulative" and "un-Christian", excited "enormous" news media interest. Mr Hooton considered that he was by no means alone in inferring that Mr Craig had been involved in sexual misconduct of some kind, not necessarily with Ms MacGregor. Because the Conservative Party was seen by many as Christian-

or morals-based, he believes Ms MacGregor's resignation and the "uncomfortable and somewhat shifty" manner in which Mr Craig handled the media attention that resulted were decisive in the failure of the Conservative Party to win a parliamentary seat.

[194] That failure was the catalyst for expressions of discontent within the Party about Mr Craig's leadership and conduct generally. Over the next few months, certain supporters and members of the Party, including at board level, began providing information about Mr Craig to Mr Slater, knowing he would be likely to publish it on the Whaleoil blog site.

### **Financial issues and Ms MacGregor's sexual harassment claim**

[195] Before addressing the political fallout and the events and publications which form the basis of the claims and counterclaims in defamation, however, it is convenient to complete the narrative of the unravelling of Mr Craig's relationship with Ms MacGregor and the settlement of their differences over financial matters and his alleged misconduct.

[196] One of the unresolved financial matters between Ms MacGregor and Mr Craig was that she had not invoiced Centurion for the work she had undertaken on behalf of Mr Craig and the Conservative Party over the previous four months. The other matter requiring resolution was the February 2014 loan of \$18,990.59 to Ms MacGregor by Mr and Mrs Craig which remained unpaid. On Thursday 25 September 2014, Mr Craig sent Ms MacGregor an email suggesting that it was "probably too soon" to meet and saying that he needed to receive invoices with supporting timesheets before Ms MacGregor and he could discuss financial matters. He said:

I also advise (as you would expect having resigned) that we now require repayment [of] the cash loan advanced to you. I suggest, as soon as you are able, you send through invoices/timesheets.

He invited Ms MacGregor to let him know when she would be able to meet, saying that he would be happy to let matters lie for a couple of weeks.

[197] On 20 November 2014, Ms MacGregor consulted Mr Jordan Williams, a lawyer and a Conservative Party supporter with whom she was friendly.

Ms MacGregor outlined the nature of Mr Craig's harassing behaviour. She alleged it started off as just comments and shoulder touches and progressed, especially after the election night incident, and became more persistent. She referred Mr Williams to Mr Craig's texts and letters to her and showed him the letters. She told Mr Williams that she was interested in a monetary settlement and an apology from Mr Craig. Ms MacGregor told Mr Williams that there was nothing in any text message or letters from her to Mr Craig that he might try to use against her. She also said that she had not been paid between May and September that year, and that the amount she was owed at the "old rate" (\$70 an hour) was \$43,800. Mr Williams provided Ms MacGregor with a transcript of his notes and his advice the following day.

[198] There was an exchange of emails between Mr Craig and Ms MacGregor in late December 2014 deferring any meeting until after New Year. On 29 January 2015, Ms MacGregor sent Mr Craig an email to which she attached an invoice for \$47,085.60 (including GST) covering her services for the period from 2 June 2014 to 17 September 2014 and copies of her timesheets. She said that she had charged her time at \$75 an hour for the purposes of the invoice and that one cause of her resignation (but not the only one) was the failure of Ms MacGregor and Mr Craig to agree on an increased hourly rate for the election period. Ms MacGregor said that in Mr Craig's memorandum "of 12 August 2012"<sup>14</sup> he had proposed a rate of \$70 per hour but said that, as Mr Craig was aware, she had not accepted that rate and believed a higher rate was appropriate. Ms MacGregor said that the rate of \$75 used in the invoices was actually less than she believed it should be but suggested it as a compromise.

[199] Ms MacGregor said that she was aware that she had been lent approximately \$18,000 and that Mr Craig had made two advance payments of \$10,000 each. She accepted that those amounts needed to be taken into account in determining what was owed to her and asked Mr Craig to show her what was owed under the loan agreement.

[200] In the email, Ms MacGregor told Mr Craig that she had made a sexual harassment claim with the Human Rights Commission the previous year and that, after much reflection, she had decided to take the claim forward. She said that the claim

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<sup>14</sup> The memorandum was dated 10 August 2012.



would be significant and that while she did not think that Mr Craig directly intended to harm her she believed he should have known and, to an extent, would have known that his actions were unlawful, wrong, deeply immoral and harmful to her. She said she was referring not only to the incident in the apartment after the 2011 election, but also to things Mr Craig said to her, things he wrote to her and the things he asked her to do throughout the time she worked with him. She said:

You should never have treated me in this manner.

[201] Ms MacGregor also said that she regarded the payment of her invoice as an entirely separate matter to the Human Rights Act claim, and asked for payment within 14 days. Ms MacGregor said that she would like to see the sexual harassment claim resolved by agreement either through the Human Rights Commission or through private negotiation.

[202] Mr Craig responded by email on 30 January 2015, saying he was deeply shocked by the allegation of sexual harassment and that he was aware of no reason for Ms MacGregor's resignation other than his refusal to discuss renegotiating her contract rate just prior to an important interview. He said her letter of resignation signalled no other reason.

[203] Mr Craig agreed that financial matters would be addressed and treated separately from the allegation of sexual harassment. He said that the contract rate of \$70 per hour had been agreed and documented and that there were discrepancies between Ms MacGregor's records underlying the invoiced claim and those held by Centurion. He agreed to communicate with Ms MacGregor's lawyers on all matters in future.

#### *The exchange of lawyers' letters*

[204] Mr Craig made no contact with Ms MacGregor's solicitors until 18 February 2015, presumably in immediate response to the detailed Gallaway Cook Allan letter from Ms MacGregor's solicitor, Mr Geoff Bevan, setting out her allegations of sexual harassment. Mr Craig's solicitor, Mr Doug Alderslade of Chapman Tripp, sent an email to Mr Bevan on the same date, attaching a statement of account for the February

2014 loan. The amount said to be owed at the end of January 2015 was \$20,829.79. The sum included interest calculated at a rate of 29 per cent per annum from November 2014 to the end of the period. On 19 February 2015, however, Mr Craig confirmed to Ms MacGregor's lawyers, on a without prejudice basis, that interest on the unpaid loan would not be charged from that date.

[205] The Gallaway Cook Allan letter begins with a summary of Ms MacGregor's allegations in which it was alleged that, over a long period, Mr Craig had used language (both written and spoken) and physical behaviour of a sexual nature to subject Ms MacGregor to behaviour that was extremely unwelcome and offensive. It says that Mr Craig's behaviour was both repeated and of such a significant nature that it had a detrimental and ongoing impact on Ms MacGregor's job and on her health, wellbeing and relationships. It was said also to have detrimentally affected her ability to earn an income during the period she worked for Mr Craig, and in the period following her resignation. Details of Ms MacGregor's allegation followed.

[206] In the Chapman Tripp letter of 13 March 2015, in reply, Mr Craig's solicitor noted that Ms MacGregor "is a mature woman, an experienced practitioner in her field and an articulate person." He said that in those circumstances he would have anticipated that Ms MacGregor would not continue to provide the services she did if she was at all uncomfortable with Mr Craig's conduct and that she had not recorded her concerns in writing. On the contrary, he said, Ms MacGregor's communications confirmed her attitude towards the close relationship that had developed between them. After a detailed rebuttal of Ms MacGregor's allegations, the letter concludes with a denial that Mr Craig's conduct towards Ms MacGregor had in any way come within the definition of "sexual harassment" in the context of the Human Rights Act. The letter cautions that Ms MacGregor's insistence on prosecuting her claim may well result in all aspects of their relationship (including private and confidential exchanges between them) being potentially open to public scrutiny.

[207] It was suggested that if Ms MacGregor was intent on prosecuting her claim then it would be appropriate to engage in a confidential mediation, if necessary by a private mediator, in which case Mr Craig would be prepared to meet the reasonable costs of Ms MacGregor's solicitor travelling to Auckland.

*Human Rights Commission mediation and settlement of Ms MacGregor's claims*

[208] On 4 May 2015, Mr Craig and Ms MacGregor participated in a confidential mediation conducted by the Human Rights Commission. The outcome was that they signed a "Mutual Resolution" under which Ms MacGregor agreed to withdraw her sexual harassment complaint to the Commission. The operative parts of the agreement are these:

The parties agree as follows

1. A significant part of the working/friendship relationship between Colin and Rachel was positive, constructive and mutually beneficial.
2. In hindsight however, both parties acknowledge that on occasions some of their conduct was inappropriate.
3. Colin apologises for any inappropriate conduct on his part to Rachel.
4. Rachel withdraws her complaint to the Human Rights Commission.
5. Neither party will make comment to the media/ third parties other than a statement that the parties met and have resolved their differences.
6. Except as provided in the previous paragraph the terms of this document are strictly confidential between the parties.
7. This resolution is in full and final satisfaction of all or any claims that either party has or may have arising out of the allegations in the Human Rights Commission complaint.

[209] Only Mr Craig apologised for inappropriate conduct. Mr Craig did not allege any conduct by Ms MacGregor after November 2011 that might reasonably have been regarded as inappropriate. The resolution recorded Ms MacGregor's withdrawal of her sexual harassment complaint to the Human Rights Commission, but did not go so far as recording that she withdrew the allegations of sexual harassment she had made. The terms of her complaint were not put in evidence.

[210] The resolution did not record any terms involving the payment of any money by Mr Craig. During the mediation, however, it was also agreed in principle that Ms MacGregor's claim that she had been underpaid by Centurion for services rendered during the 2014 election campaign would be resolved on the basis that Centurion would pay Ms MacGregor \$16,000 inclusive of GST. As Ms MacGregor had previously acknowledged, the invoice for \$47,085.60 (including GST) which Ms MacGregor had submitted for her services from 2 June 2014 to 17 September 2014 had been partially paid by advances by Centurion totalling \$20,000.

[211] Mr Henry argued on behalf of the defendants that the net effect of the arrangements was that Mr Craig paid \$36,000 as part of the settlement of the pay claim. Ms MacGregor, however, had agreed in pre-mediation correspondence that the advances should be offset against the claim, so the amount in dispute at the mediation was the balance of approximately \$27,000. The effect of the settlement was that Centurion (in reality, Mr Craig) paid a further \$16,000 and Ms MacGregor agreed to abandon the balance of her pay claim – \$11,085.60. It is probable, in my view, that Ms MacGregor was persuaded to forego that part of her claim because of her inability to prove that she was entitled to be paid any more than \$70 per hour, and because she may have been unable to establish an entitlement to be paid for all of the invoiced hours.

[212] The financial settlement between Mr Craig and Ms MacGregor also addressed Ms MacGregor's indebtedness to Mr and Mrs Craig arising from the February 2014 loan of almost \$19,000 by which she reduced her credit card debt. Ms MacGregor's evidence was that the arrangements were discussed and agreed in during the mediation on 4 May 2015. Mr Craig said that, although the issue of Ms MacGregor's unpaid fees was resolved at the mediation, the forgiveness of the debt was not agreed until after the mediation when Mrs Craig and he were satisfied that Ms MacGregor could not afford to make the repayment. I do not accept Mr Craig's evidence on that point. It is contrary to Ms MacGregor's evidence, which I accept as understandable and credible, that she would not agree to any settlement of the sexual harassment complaint without also agreeing on a settlement of the financial matters; that is, her pay claim and Mr Craig's claim that she should repay the advance.

[213] While the settlement of the pay claim had been treated separately in the correspondence between Mr Craig and Ms MacGregor and their legal advisers prior to the mediation, I am satisfied that it was agreed in the mediation that an exchange of letters would follow the mediation to record the arrangements for forgiveness of the loan which had been reached. There was no reason for Mr Craig to insist on that course other than to attempt to distance the withdrawal of Ms MacGregor's harassment complaint from any financial payment resulting from the mediation.

[214] On 5 May 2015, Chapman Tripp wrote to Gallaway Cook Allan proposing payment of the \$16,000 inclusive of GST in settlement of Ms MacGregor's pay claim. Acceptance of that proposal was provided by a return letter from Gallaway Cook Allan dated 7 May 2015. That correspondence served only to confirm what had been agreed on 4 May 2015. Included with the letter of 5 May from Chapman Tripp, however, was a draft letter prepared by that firm which related to the February 2014 loan. The draft is in the form of a personal request from Ms MacGregor's solicitors to "Colin & Helen" which reads, in part:

Ms MacGregor is grateful for the loan which was originally advanced on a short-term basis to clear her credit card debt. Unfortunately her financial circumstances have not improved and she is in a position such that she cannot repay the loan.

You previously expressed your support and care for Rachel and I am therefore writing to request the loan and interest be forgiven on compassionate grounds. Thank you for your consideration of this request.

[215] A letter in the terms drafted by Chapman Tripp was sent to Chapman Tripp by Gallaway Cook Allan on 7 May 2015. What was then purportedly an acceptance of that "request" was sent to Gallaway Cook Allan by email from Chapman Tripp, reading:

In the particular circumstances our clients have considered your client's request and in view of the compassionate grounds that exist they agree that they will forgive the loan and interest due on those grounds.

[216] This attempt by Mr Craig to demonstrate that Mrs Craig and he did not forgive the debt as part of the mediation, but were awaiting evidence of Ms MacGregor's financial position before considering that course, was an elaborate and disingenuous subterfuge. Leaving aside the phoney reference to Mr and Mrs Craig having

“considered” the contents of a letter drafted by their own solicitors on their instructions, Mr Craig knew Ms MacGregor was in difficult financial circumstances in 2013 and throughout 2014. He had placed her under considerable pressure when he demanded repayment of the loan shortly after her resignation, and he would have known that her position had not improved materially by the time of the mediation in May 2015. There cannot be any doubt that the situation gave Mr Craig significant leverage in the mediated negotiations.

[217] When challenged by others about the financial aspects of the settlement with Ms MacGregor in 2015, and again in evidence in this proceeding, Mr Craig endeavoured to portray the agreement reached on the outstanding loan as unrelated to the withdrawal of the sexual harassment claim. I am satisfied that that is not correct.

[218] Although Ms MacGregor waived the payment of approximately \$11,000 of the sum she claimed she was owed by Centurion for fees, she received the benefit of the forgiveness of debt of \$18,990 and any interest. In February 2015, Mr Craig had calculated interest at a rate of 29 per cent per annum when claiming that the total sum owed under the advance at the end of January 2015 was then \$20,829.79. On that basis, the total sum owed at the date of the mediation would have been around \$22,500. Ms MacGregor was relieved of that burden. Moreover, Mr Craig contributed an undisclosed amount to Gallaway Cook Allan's legal fees for services rendered to Ms MacGregor and met Mr Bevan's travel and expenses related to his attendance at the mediation.

[219] The outcome was that Ms MacGregor enjoyed a significant financial benefit, unrelated to her pay claim, as part of the settlement in which she withdrew her sexual harassment claim. The settlement of the pay claim by a cash sum of \$16,000 meant that Ms MacGregor would have had the funds to repay a large portion, but not all, of the money she owed Mr and Mrs Craig. I have no doubt that the financial relief she obtained when the loan and interest were forgiven was an important operative factor in her decision not to pursue a claim for any form of compensation for sexual harassment, and that Mr Craig knew that.

[220] Any hope that Ms MacGregor and Mr Craig may have entertained that the settlements agreed at the mediation would bring an end to their dealings with each other and to any public scrutiny of their relationship was unfulfilled. Although discussion of what occurred between them following completion of the agreement cannot be avoided, it is necessary to return the narrative to the Conservative Party and the combined effect of Ms MacGregor's resignation and the failure of the Party to win a seat in the House of Representatives in the 2014 election.

## **MR CRAIG AND THE CONSERVATIVE PARTY**

### **What happened after the 2014 general election**

[221] Shortly after election day in 2014, the Conservative Party's chairman, Mr Brian Dobbs, took action to commence a disciplinary process against a former member of parliament and then Conservative Party board member, Mr Larry Baldock, who had stepped down as the Party's candidate for Tauranga in the lead-up to the election. After Mr Baldock had made his initial announcement that he would not be a Conservative Party candidate, he gave the board an assurance that he would not speak out publicly against the Party. Not long before the election, however, he declared public support for a New Zealand First candidate for the Tauranga seat who was standing against the Conservative Party's candidate, its Secretary, Nathaniel Heslop. The Party's concern was that he stood down as a candidate without obtaining the approval of, or even informing, the board. The Conservative Party board considered that Mr Baldock's conduct had allegedly brought the Party into disrepute in breach of its constitution and invoked a disciplinary procedure which included a disciplinary hearing to be conducted in mid-November by telephone conference. Mr Baldock remained on the board in the meantime.

[222] On 30 September 2014, Mr Baldock sent an email to Mr Craig indicating that he would be submitting a review of the Party's election performance at the next board meeting. Mr Baldock criticised Mr Craig for having announced prior to the disciplinary meeting that he considered Mr Baldock should resign. Mr Craig responded by informing Mr Baldock that the "vast majority" of the board felt, "deeply betrayed" by his actions. The result of the disciplinary inquiry held on 14 November 2014 was that Mr Baldock was suspended from membership of the Party.

[223] Mr Baldock was not without support among the board members and information concerning the Party's various post-election difficulties began to leak to the news media. The Party was facing serious financial difficulty and after a review of the accounts determined that an injection of \$670,000 was required to pay creditors and staff. Mr Craig donated \$355,000 of that amount and entered into a loan agreement for the balance of \$315,500; that sum being repayable within 12 months and bearing interest at a rate of eight per cent per annum.

[224] Among the information released without authority was a critique of the Conservative Party's 2014 election campaign prepared by Mr David Walden, a prominent advertising executive and Conservative Party supporter who had been engaged by the Party to manage its campaign strategy. The report, headed "Lessons from the 2014 Campaign", was highly critical of Mr Craig and his performance during the campaign, including challenging his decisions to follow certain campaign strategies and his decision to retain the services of Rachel MacGregor, notwithstanding that she was regarded by at least some people within the Party as being out of her depth, ineffective and, at times, embarrassing. Mr Walden described Ms MacGregor's departure as "a disaster". He asked:

What caused her to turn against Colin and label him "manipulative" which the left wing media loved and amplified?

We need to know, as a journalist will be digging.

### **Mr Slater and Whaleoil get involved**

[225] The Walden Report was sent to Peter Belt who was employed by Mr Slater's company, SMCL, and who was instrumental in managing the Whaleoil blog site as deputy editor to Mr Slater. Mr Slater claimed journalistic privilege over disclosure of the identity of the author of a number of emails to Mr Belt or Mr Slater from a person who was plainly a Conservative Party member. The name and email address of the sender, and usually the "signature" have been redacted from the exhibit copies. I am satisfied, however, from the layout and content of the anonymous emails that many of them were probably sent (and responses received) by John Stringer, a Conservative Party board member. Mr Stringer revealed himself to be a strong critic of Mr Craig and a supporter of Mr Baldock during the Baldock disciplinary proceedings. Among



the clues to Mr Stringer's identity is his habitual use, in emails where his identity has not been redacted, of a characteristic signature using the punctuation mark known as a "tilde" thus: "~J" or "~ John". I am satisfied that it was Mr Stringer who sent the Walden Report to Mr Belt and who continued to leak information to him in breach of his confidentiality obligations to the Party.

[226] On 16 November 2014, Mr Slater published an article on the Whaleoil blog site which was headed "Leaked report says Colin Craig doesn't listen, is an idiot, and a dictator". It was a scathing précis of Mr Walden's views, quoting at length from his report. Mr Slater's opening remarks under the headline were:

I have long said that Colin Craig is a political retard.

Many people attacked me for being so blunt, but they were usually acolyte, single issue nutters or forelock tuggers from the Conservative party.

Basically though the bloke is a dead set political idiot, NZ politics is better without him.

[227] Mr Slater's piece concluded:

Colin Craig has made a habit of coming third or worse in elections. He has blown millions of dollars proving to everyone but himself that he is deadset useless at politics. If he won't listen to his advisors then he really is politically retard [sic] and my comments at the beginning of this article stand, New Zealand is better off without him involved in politics.

[228] Mr Stringer sent a further email to Mr Belt following the Whaleoil publication. The email suggested that, "the allegations will out" and referred to numerous rumours and Mr Craig "stonewalling" and avoiding the discussion inside the Conservative Party, despite "sacking one of his Board (an ex MP)<sup>15</sup> for minor infringements". Mr Stringer said he had confronted Mr Craig on the allegations about Ms MacGregor's claim of sexual harassment and that Mr Craig had maintained it was "... all a storm in a teacup over employment rates". He said he understood that Ms MacGregor's advisers had counselled that the harassment allegations should be parked "for now."

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<sup>15</sup> Mr Baldock.

[229] On 23 December 2014, Mr Stringer sent Mr Belt an email suggesting that "VERY close scrutiny of Conservative spending caps and Electoral Returns ... (would) be a good vein to tap in the new year", and that Mr Craig's propensity to "change the invoices" was alarming. On 30 January 2015, after the Conservative Party Electoral Returns were filed, Mr Stringer sent a further email to Mr Belt suggesting that the Napier electoral return could be interesting if looked at "more deeply". The email hinted at sharing of expenses disproportionately across electorates to avoid breaching the expenses payment cap imposed by the electoral rules and indicated that there were some people in the Party who were "angry with Colin". The email recounted the disharmony within the Party and the resignation of at least one board member.

[230] A further Whaleoil article appeared on 28 February 2015, noting that Mr Craig had been publicly inactive. It said that he was fighting for the Party's political survival and that it would "all burst forth shortly, including the legal proceedings I understand are underway."

#### **Mr Craig's disclosures to the Conservative Party board**

[231] The Conservative Party held a board meeting on 28 February 2015. The minutes of the board meeting were not produced in evidence but Mr Craig said that he had updated the Board on Ms MacGregor's pay claim. He says he told the board that Ms MacGregor "had indicated she would make a claim for sexual harassment ... [that] he was not aware of the monetary amount she would be seeking." He said he was aware only that it would be very significant. He said he made it clear that he thought the harassment claim was "ridiculous" and that he would sort the matter out as it was absolutely a false claim. Mr Craig did not tell the board that, in fact, his solicitors had received the Galloway Cook Allen letter containing detailed allegations of sexual harassment including references to events such as the 2011 election night incident which he knew to be true, and references to other compromising circumstances including quotations from letters which he had sent to her. He did not tell the board that Ms MacGregor had made a claim to the Human Rights Commission.

[232] Although Mr Craig kept a low political profile during the exchanges of correspondence with Ms MacGregor's solicitors in February and March 2015, and around the time of the mediation in May of that year, journalists and political commentators maintained an interest in the circumstances of Ms MacGregor's sudden resignation, rumours about the nature of her relationship with Mr Craig, and questions about whether Mr Craig had paid Ms MacGregor a substantial sum of money in exchange for her agreement not to pursue her claims against him.

[233] On 26 May 2015, Mr Williams exchanged text messages with Ms Rankin in which he criticised Mr Craig for hypocrisy in speaking to Westlake Girls High School about the Marriage Amendment Bill, "lecturing people about the sanctity of marriage." Ms Rankin said she hoped Mr Williams had not bought into "that rach stuff", to which Mr Williams replied that he had "read the explicit handwritten letters from Colin where he talks about his fantasies." After having told Ms Rankin that he assumed she had left the Conservative Party because she had "found out all the things Colin had been doing" he said that he had read the letters and that he presumed Mr Craig had paid Ms MacGregor to keep her quiet. He said he knew she had made a big claim to the Human Rights Tribunal (separate from the claim about her invoices not having been paid for months), but said that recently Ms MacGregor had refused to talk to him about it and presumed she wanted to move on. Ms Rankin said to Mr Williams that she knew that Ms MacGregor had been paid in advance because she saw all the payments, but asked how explicit Mr Craig's letters were and whether the public would think they were bad. Mr Williams' response was:

From what I understand the loan/invoice stuff was complicated. Re the letters, I read the originals late last year when I visited Rachel in Rodney. Colin wrote stuff like "I slept well last night because I dreamt of being between your legs" and "I wish there were two of me so I could marry you." Wouldn't have believed it had I not read it with my own eyes. It was sexual fanaticises [sic], poems, kisses etc and at one point even an acknowledgement it was unwanted! The man makes me sick.

Ms Rankin responded by thanking Mr Williams for being so up front with her, saying she was "horrified" and that Mr Craig had sworn to her many times there was nothing for her worry about.

[234] In the minutes of a Conservative Party board meeting on 30 May 2015 (not attended by Ms Rankin), Mr Craig was recorded as having given an oral report that he and his lawyers had met with Ms MacGregor and that they had resolved all differences. Mr Craig told the board there was a settlement agreement in place and both parties agreed that, if there was any enquiry from the media, a short statement confirming that all matters had been resolved would be provided.

[235] Mr Craig said in evidence that he told the board at that meeting the “MacGregor claims [had been] withdrawn” and that the invoice claims had been settled with a part payment of the outstanding balance of \$16,000. What Mr Craig told Ms Rankin and the board might have been strictly true, but it was not the whole truth. Having previously reported to the board that Ms MacGregor had made a “ridiculous” sexual harassment claim, he did not say that he had told Ms MacGregor repeatedly about his romantic and sexual interest in her over a period of over two years from November 2011. I am satisfied that Mr Craig intended to mislead the board into believing that Ms MacGregor’s allegations of sexual harassment were a product of her infatuation with him and without foundation. That is why Ms Rankin was shocked by Mr Williams’s revelations about sexual fantasies and poems contained within Mr Craig’s letters to Ms MacGregor.

[236] Ms Rankin spoke to Mr Craig about the disclosures made by Mr Williams, without revealing her source. On 3 June 2015, she sent Mr Craig an email; she said that she did not believe Mr Craig had been totally honest with her but that he had told her enough for her to know that the issue had serious repercussions for him, his family and the Party. She observed that he would need to make a decision soon on his actions and that, if he did not, she would need to brief the board. She said that rumours were everywhere.

[237] Mr Craig responded by saying that he had answered honestly and directly all the questions Ms Rankin had asked. He said he wished Ms Rankin to keep the discussion entirely confidential but said that Ms MacGregor had made several false allegations to different people. He said that the main substance of the allegations Ms Rankin had passed on to him were false. Mr Craig said he could see no further possible actions he could take at that stage, and said the majority of the board members

were aware of the broad details. He said that he had not spoken to every board member for reasons which she would understand. I infer he was referring to the possibility of information being leaked.

[238] Replying, Ms Rankin said that the board needed to know about it. She suggested that the things he had talked to her about, such as "the poem", was explosive stuff for the media and that his credibility would be over forever, not because he was stupid but because he had set himself up as a moral leader talking about the sanctity of marriage, honesty and decency. She told Mr Craig he had an obligation to advise the board and let them decide what was to happen next.

### **The sauna interview – 9 June 2015**

[239] On 9 June 2015, Mr Craig agreed to be interviewed for television while sitting inside a sauna with his shirt removed. Probed as to the circumstances of Ms MacGregor's resignation, he made a reference to job sharing her position to try and relieve the stress of the work on her.

[240] Very soon after the broadcast, Whaleoil published a photograph of Mr Craig and the interviewer with their shirts removed. It was headed, "THE PHOTO IN WHICH COLIN CRAIG LEAVES A SAUNA WITH A BISEXUAL MALE ..." In it, Mr Slater said of Mr Craig:

... that rumour has it he wrote an enormous cheque so his ~~pre-erection~~ pre-election misdeeds won't be made public. Even better, the Conservative Party Board still don't know half of what Colin really got up to.

[241] There was an immediate exchange of emails between Mr Stringer, Ms Rankin and Mr Craig, commenced by Mr Stringer asking Mr Craig whether he and Centurion had settled with Ms MacGregor and asking, "How does Whaleoil know that?" Ms Rankin described the sauna interview as "one of the most damaging things" Mr Craig had ever done. Mr Stringer sent a further email agreeing with Ms Rankin, this time copying in the other members of the Conservative Party Board, and saying that Mr Craig needed to step down as leader of the Conservative Party. He said:

I don't believe you have the judgement or the political acumen to continue as the centralist leader you want to be; we need change, a Team approach. You

have contempt for us as your Board, you won't listen to us, you won't discuss things, and appeared disinterested in the unglamorous political things like: holding regional meetings, building up the membership, recruiting quality candidates, developing policy, crafting our Party infrastructure, the things we so desperately need. We are not getting that leadership. It seems you're only interested in chasing media coverage for yourself at any cost.

[242] Mr Craig responded by saying that he was always happy to discuss things but not by email. In reply, Ms Rankin said Mr Craig had made a grave mistake and that it needed to be discussed by the board as a whole.

### **Ms MacGregor's claim that Mr Craig breached the settlement agreement**

[243] On 11 June 2015, Ms MacGregor sent Mr Craig a letter by email which she copied to Gallaway Cook Allan and Chapman Tripp. She complained that the reference in the sauna interview to job sharing, which implied that she was not professionally capable of performing her duties for the Conservative Party, was not true and not the reason for her sudden departure. She was particularly concerned that the statement was inconsistent with what she had told potential employers in that she had held out her role as being the sole press secretary at the Party. She said that the statement was a clear breach of the settlement agreement, referring to clause 5.

[244] Ms MacGregor said that she required Mr Craig to issue a retraction, to be agreed in advance with her or her lawyer, and she suggested appropriate wording in an attached document. She sought also a written undertaking that Mr Craig had not otherwise breached the settlement agreement by making any further comments about her departure, including any comments to people within the Party, and sought an assurance that he would not in the future discuss the circumstances of her departure other than by making a statement in terms of clause 5 of the resolution agreement.

[245] Among other things, Ms MacGregor said:

It is possible that you are interpreting the Settlement Agreement confidentiality clauses as only applying to the actual settlement, and not the circumstances leading up to my resignation such as:

- the sexually explicit handwritten notes you gave me;
- the inappropriate requests for back and shoulder rubs;
- the persistent and without exception unwanted sexual comments you made to me;

- the constant requests to work late at night and alone with you to 'debrief';
- the reasons for my request for the Party to find separate hotel accommodation when travelling with you; and
- your sexual advance on election night in 2011.

We either have a comprehensive prohibition on speaking to media / third parties that applies to both of us, in which case you are in breach, or those obligations only cover the terms of the Settlement Agreement, and I am free to defend myself publicly. Either way your statement cannot stand uncorrected. I will not stand idly by while you sour my reputation.

I reserve all rights.

[246] Mr Craig responded by saying that he had intended the response to be positive and not negative but that the explanation about 16-hour days and extensive travel requirements had been cut by the broadcaster. He apologised if he had caused Ms MacGregor offence but said that he did not believe a retraction was necessary or appropriate as it would only fuel unwanted media interest. Mr Craig suggested that they might draft a short statement correcting any negative implication. He said that he had not shown the board the confidential agreement and, although the board was aware that matters had been resolved, they did not know the specific terms and were aware that matters were covered by confidentiality. Mr Craig said that he had shown it to no one except his wife and legal counsel. He then said that he had been advised that Ms MacGregor had breached confidentiality by showing confidential correspondence between them to a third party and allowing that correspondence to be photographed.<sup>16</sup> Mr Craig said the third party was then texting the information to others and said he would appreciate her advice that this was either a false claim or that she had ensured that all confidential correspondence remains confidential "going forward". He said he did not see any need to re-open the debate between them by responding to the part of her letter referring to the circumstances leading up to her resignation.

[247] There is no evidence of any response from Ms MacGregor.

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<sup>16</sup> Mr Craig did not know at that time – and could not have known – that Ms MacGregor had given the correspondence and other material to Mr Williams more than six months prior to the mediation in May 2015 and that he alone was responsible for passing the information about the contents to Mr Slater.

## **The continuing pressure on Mr Craig to step down as leader**

[248] Pressure began to mount on Mr Craig from other members of the Conservative Party to be more forthcoming about the nature of his relationship with Ms MacGregor, the public speculation about sexual harassment and the terms of his settlement with her. On 15 June 2015, Mr Williams arranged to meet board member Mr Laurence Day on 18 June 2015 to discuss the allegations against Mr Craig and to show him the dossier of material he had obtained from Ms MacGregor. The dossier included copies of letters Mr Craig had written to Ms MacGregor and the notes she prepared between November 2014 and February 2015 to instruct her lawyers and obtain advice about her claim under s 62 of the Human Rights Act. Mr Williams told Mr Day that no one else had seen his copies of the documents he proposed to disclose to Mr Day. He also said that the Party chairman, Brian Dobbs, was interested in joining them at their intended meeting.

[249] Mr Dobbs sent an email to the Conservative Party board late at night on 16 June 2015, calling an immediate board meeting to be held in a hotel near the Auckland Airport at 7 pm on Friday, 19 June 2015. He did not disclose the agenda.

[250] Also on 16 June 2015, an anonymous source sent an email to Mr Slater proposing two blog posts highly critical of Mr Craig. He suggested that he had information which concerned the inner workings of the Party and Mr Craig's business arrangements and how he treated his staff. He said he had enough information to demonstrate that the description (given by Ms MacGregor at the time of her resignation) that Mr Craig was "un-Christian" was an absolute understatement. The email accused Mr Craig of lying to the Party's board by telling it that no allegations of moral impropriety had been levelled at him since Ms MacGregor resigned.

[251] On 18 June 2015, Mr Stringer sent to Patrick Gower, a journalist with the news media company Media Works, saying (in respect of Mr Craig) that there were "unwanted unsolicited SXTS to women." When Mr Gower responded asking him to send the material, Mr Stringer replied:

Sorry P., don' have. TV1 have them (not from me) and Chair Brian, from sep. source.



Colin paid Rachel \$107,500. Half employment dispute, half sexual harrasment [sic] hush money. Talk to Whaleoil boys on that. ~J.

[252] Mr Stringer was not called to give evidence about the basis for his assertion to Mr Gower that Mr Craig had paid Ms MacGregor \$107,500, with half of that sum being paid to settle her pay claim and half to settle the sexual harassment claim. The figure of \$107,5000 had been provided to him in an email dated 15 June 2015 which Mr Slater acknowledged in evidence may well have been a communication from Peter Belt. I am satisfied from the nature of the exchange and others surrounding it that Mr Belt was Mr Stringer's source. In a related email, Mr Belt told Mr Stringer:

I'm as confident as I can be of any fact in this particular house of cards.

The source has this number directly from a party directly involved in the transaction. This isn't rumour.

It is not exact. But it is close. The reason it is not exact is that would trigger CC to call on the confidentiality clause. I do not know the real number. Just that it is close to that.

[253] Mr Belt told Mr Stringer that the sum of close to \$107,500 had been paid by the business, not Mr Craig personally, and that he understood Mr Stringer had been told (by Mr Craig) "a number a lot lower than that." Mr Stringer replied that the board, other than a person I assume to have been either Mr Dobbs or Ms Rankin, had been told that Mr Craig had settled until "just recently".

[254] If Mr Belt was telling the truth in saying that Whaleoil's source was close to a party directly involved in the transaction, the source may have been Mr Williams and he may have obtained the information from Ms MacGregor. That allegation was never put to Ms MacGregor, however, and since Mr Williams was not called as a witness there was no evidence to clarify the issue. There was evidence suggesting that Mr Williams had not spoken to Ms MacGregor since the mediation in May. I am not prepared to hold Ms MacGregor responsible for the disclosure.

[255] Nevertheless, Mr Craig sought advice from Chapman Tripp concerning information provided to the board which he thought must have disclosed the full details of Ms MacGregor's claims of sexual harassment. Suggesting that if the information was not already with the media it would be before long, via Whaleoil,

Mr Craig wished to know whether he would be released from his obligations of confidence under the settlement with Ms MacGregor. He said that, if he did not table a rebuttal to the board, he would definitely be removed from the leadership, the board and the Party, and expressed concern about the leak of his response to the news media. Second, he noted that if Ms MacGregor's claim was released to the media the damage publicly would be significant and that, although he had previously been positive about Ms MacGregor in the media, he had been advised that he would need to issue a statement advising of her performance failures and other matters, pointing out "big flaws" in her claim.

[256] Mr Craig also sent by email a reply to questions put to him by a television journalist, Heather du Plessis-Allan, in which he said in response to her question about allegations of sexual harassment against Rachel MacGregor that he had met with her and resolved their differences. He said that he had settled financial issues which were outstanding; that he had not been advised of any motion proposing his removal from the Party leadership and that his actions during the 2014 election campaign and since (including the sauna interview) did not lead to disappointing election results or display poor political judgment. Mr Craig denied that he damaged the Party's relationship with the National Party during the election campaign.

[257] At 10.15am on 18 June 2015, Ms MacGregor sent an email to Mr Williams asking him to return the copies of the letters she had received from Mr Craig "as soon as possible." She said that she appreciated the help Mr Williams had given her in December by writing the file note and helping her to prepare the first stages of her claim, but said she would like the letters to be returned. She did not want them to be photocopied before they were returned and said:

I do not want the letters to be used against Colin. I want this whole thing to go away and for there to be no more trouble.

[258] Mr Dobbs, Mr Day and Mr Williams met some time in the late afternoon on 18 June 2015. Despite Ms MacGregor's request for the return of her documents, Mr Williams relayed the allegations made to him by Ms MacGregor about Mr Craig's conduct and showed them the dossier, including the letters written by Mr Craig the contents of which have been described fully above. Mr Dobbs's notes of the meeting

contain notes of what Mr Williams said were the allegations Ms MacGregor made to him in November 2014 about Mr Craig's conduct. The allegations include references to the 2011 election night incident; Mr Craig applying increased sexual pressure to Ms MacGregor and buying her jewellery; "sexting text messages"; inappropriate touching and words and references to Ms MacGregor giving Mr Craig massages. Mr Dobbs also noted excerpts from several of Mr Craig's letters, including snippets of the poems in the 24 December 2013 letter. On 18 June, Mr Stringer sent Mr Dobbs a redacted copy of his email exchange with Mr Belt on 15 June 2015.

### **Mr Craig stands down as leader on 19 June 2015**

[259] At 8am on 19 June 2015, Mr Slater published a piece on Whaleoil suggesting that Mr Craig's position as leader of the Conservative Party was under threat and that he was likely to be removed as leader at the board meeting which had been called for the following day. He said, in response to Mr Craig's statement that he had met with Ms MacGregor and they had resolved their differences:

One wonders if a big fat cheque might have helped resolve the differences. From what I've been told the amounts discussed are way outside resolving an employment dispute but it would also seem that the board hasn't been told of the full amounts.

[260] A short time later, Mr Craig gave an interview to Mr Paul Henry on Radio Live. When challenged about reports that members of the Conservative Party board were unhappy about the sauna interview and were questioning whether he had been honest with them about his relationship with Ms MacGregor, Mr Craig said he had always been honest with the board in his dealings or relationship with Ms MacGregor and that no board member had ever raised that concern with him. Mr Craig was asked if there had been an inappropriate relationship at all between Ms MacGregor and him. He said:

No. Look, all those matters have been dealt with, resolved. I am grateful for the work she did for the party. And it really is very old news. And I think people are simply trying to create a story here out of what may be rumours.

[261] I infer that Mr Dobbs told Ms Rankin what he had been revealed in Mr Williams's disclosures the previous day. At 8.36 am, Ms Rankin sent Mr Craig a

text accusing Mr Craig of being a liar and saying, “we have seen your txts letters cards and poems.” She told him the board would see them at the meeting planned for that evening.

[262] At 9.56 am, Mr Williams sent Mr Slater a draft blog post headed "A poem Colin Craig doesn't want you to see." The draft post attached photographs of one of the poems headed "Two of Me" in the letter of 24 December 2013. Mr Williams then sent Mr Slater questions he described as "completely random", saying they could be asked of a high profile New Zealander, but they were all plainly related to Ms MacGregor's allegations. Mr Williams sent further emails over the ensuing hour, including information which one assumes he thought would be of interest to Mr Slater and suggesting lines of questioning, and prospects of who might take over as leader of the Conservative Party now that Mr Craig's departure was "inevitable". He referred to Mr Craig having locked himself into the Conservative Party by lending it money. In one email, he quoted a passage from the letter of 18 June 2014 sent by Mr Craig to Ms MacGregor in which Mr Craig said that, while he did not claim to be perfect, he was a man of honour and integrity who never made up stories or lied. Another referred to Mr Craig having told a political journalist the night before that none of the board members had expressed any unhappiness to him and he would have expected some notice about a leadership vote.

[263] Later in the morning, after discussions with Mr Dobbs, Mr Craig decided he would step down as leader of the Party. I infer that Mr Dobbs had discussed with Mr Craig the details of Mr Williams's disclosures and the information contained in the email exchange between Mr Stringer and Mr Belt. Mr Dobbs and Mr Craig prepared statements for a press conference to be held at 3.30 pm on the afternoon of 19 June 2015. At 3.15 pm, Mr Slater published a blog post in terms of the draft sent to him earlier that day by Mr Williams, including the two photographs of the poem and the end of a letter to Ms MacGregor with Mr Craig's signature. Mr Slater said in the blog:

WhaleOil Media can reveal that Colin Craig failed to tell the Conservative Party's Board that he previously faced serious allegations of sexual harassment from a former staff member in a complaint laid with the Human Rights Commission. It is understood that the claim led to a confidential payout which until recently the Board were unaware of.

We have been told by members of the Board that they were assured on multiple occasions by Colin Craig that no allegations of a sexual or moral nature were involved and relied on one element of the claim, a series of unpaid invoices or a dispute in relation to the employee's hourly rate, to hide the more serious allegations.

WhaleOil media understands that no sexual relationship resulted, but Colin Craig is alleged to have pursued the staffer including sending a large volume of text messages, letters and inappropriate touching.

[264] Mr Slater said in evidence he had not planned to publish the blog post only 15 minutes before the press conference; the conference had originally been scheduled for 3.00 pm. The result of his doing so, however, was that news media representatives who were at the conference had access to the post before Mr Dobbs and Mr Craig stepped up to the lectern.

[265] At the press conference, Mr Craig and Mr Dobbs read statements to the news media. Mr Craig announced that he was standing down as leader of the Conservative Party. He said that there had been many and varied rumours about speculation that the board meeting would see a leadership vote taken and that that meeting had been postponed. Mr Craig said that he was very supportive of the call for a leadership review and that he was standing down to enable the board to consider the leadership role. He made no mention of Ms MacGregor nor any of the rumours surrounding her resignation. In his statement, Mr Dobbs said that he was grateful to Mr Craig for standing down to allow the board to explore all possible leadership options going forward. He thanked Mr Craig for the contribution he had made to the Party and said Mr Craig would remain an active member and supporter. Like Mr Craig, Mr Dobbs made no comment about the rumours concerning Mr Craig's relationship with Ms MacGregor. Neither Mr Dobbs nor Mr Craig answered any questions from news media representatives.

[266] It is not difficult to imagine the unfavourable impression Mr Dobbs's and Mr Craig's statements, and their refusal to answer questions, made on the journalists present. Mr Slater said that he had attended the press conference to see whether Mr Craig would "come clean" or "try to cover up his conduct" because the press conference had been hot news and the media were looking for sources to talk so they could publish more information about what Mr Craig was trying to conceal. The poem

and the letter referred to in the blog post earlier that day were highly damaging in Mr Slater's view. Mr Slater denied that there was any "dirty politics" element to the approach he took to this matter, describing it as "a genuine old-style media news scoop of a politician caught with his pants down trying to cover up the claims of sexual harassment by a younger female press secretary".

[267] At 5.30 pm Mr Slater posted another blog on the Whaleoil site republishing an email Mr Williams had sent him earlier in the day, headed, "Who will take over from Colin Craig?" It concluded, after reviewing the possible candidates, "Not a lot of good choices there, but anything will be better than Crazy Colin."

### **MR SLATER'S STATEMENTS ON RADIO AND TELEVISION AND HIS POSTS ON WHALEOIL – 19 JUNE 2015 TO 29 JULY 2015**

#### **Publication 1 – *Newstalk ZB* – 19 June 2015, 5.30pm**

[268] At 5.30 pm on 19 June 2015, on a drivetime radio show on *Newstalk ZB* hosted by Mr Larry Williams, Mr Slater gave an interview about the allegations which appeared to have led to Mr Craig's decision to step down as Conservative Party leader. Several of the impugned statements made by Mr Slater on this first occasion of alleged defamatory publication were repeated on later occasions, albeit that the wording may not have been identical, and they provided a context for other statements which are the subject of claims by Mr Craig. It is convenient, therefore, to set out the relevant exchanges between the interviewer and Mr Slater here:

Larry Williams: Colin Craig's resignation today comes on the back of constant speculation about his behaviour regarding his press secretary who resigned just two days before the election last year. It's now being claimed the Conservative Party leader admitted to the inappropriate behaviour and settlement. Copies of the correspondence from Mr Craig to the staff member have been given to Whaleoil blogger, Cameron Slater, and Cameron Slater is with me ... And I should say at this point we have cross referenced this, we also know of another source who has exactly the same documentation.

What do you know of the allegations, Cameron?

Cameron Slater: ***Look the allegations are true, I wouldn't have run these if they weren't.*** Colin Craig is a highly litigious

person and likes to threaten lawyers or utilise lawyers against people to try and hush them up but ***the documentary proof is irrefutable and these allegations are not actually allegations they're actually what's happened. Where he has settled with a former staff member a large sum of money, I'm told it runs into 6 figures.*** And there is 4 allegations of sexual harassment and the complaint was actually laid with the human rights commission. I've got copies of correspondence between Colin Craig and his former staff member. Some are in his own handwriting. Many are signed. So they were printed out and an ink signature is put on the bottom of those. ***And I also have copies of SEXT messages, you know dirty text messages that had been sent as well.*** So it's quite untoward behaviour from someone who portrayed himself as the anti-politician as someone who had higher ethical standards and was more honest than anyone else. It just turns out that Colin Craig is a ratbag politician like the rest of them.

Larry Williams: What do you know about this settlement, I take it was a confidentiality agreement?

Cameron Slater: Well I don't know the exact number and a number of other people who are my sources can't disclose the exact number ***but everybody says it's 6 figures. Now you don't do 6 figure sums for settlement of employment matters which is what Colin Craig told the Board, and he also told the Board a substantially lower amount of money as well. ...***

Larry Williams: Do you believe a board member has seen this document that you have?

Cameron Slater: I believe most of the board members have now seen it.

Larry Williams: ***Texts, emails, letters?***

Cameron Slater: ***Yes.***

Larry Williams: ***And the nature of them again is what? Is it sexual harassment?***

Cameron Slater: It's sexual harassment. Let's be clear on this. There's no actual sexual relationship that has occurred, ***the staff member concerned rebuffed the approaches but it was, the harassment was of a sexual nature.*** This is not a couple of ponytail pulls that has been much of in the media. This is far more serious than that and it's been committed to writing as well ***so there's plenty of evidence.***

Larry Williams: And Mr Craig has denied multiple times that there was ever been any inappropriate behaviour.

Cameron Slater: Well he has, he even did it today at the press conference. Which was quite bizarre it's one of the weirdest press conferences I've ever been to. But yes he essentially said that there's been all sorts of rumours and innuendo and quite bizarre stuff. ***But the documents and the evidence is clear. There is no way that he can deny it.*** And if he thinks he's going to put his name forward in the new leadership ballot or whatever they're going to do to solve this problem, that was the suggestion made that he was resigning temporarily until they had this review and then they'll see where it went. If he thinks he's going to put his name forward for that, then I've got a warning for Colin Craig it's ah, don't, because there's plenty more to come.

Larry Williams: Thank you that is Cameron Slater, Whaleoil blogger....

(Emphasis added to identify the statements relied upon by Mr Craig in his pleading)

[269] Mr Craig says he was defamed by the statements that he had sexually harassed Ms MacGregor; sent her numerous "dirty" sexually explicit text messages; settled her sexual harassment claim by paying her a large sum of money running into six figures; and that he had lied to the board of the Conservative Party about the settlement.

[270] Other news media organisations, such as the Fairfax online news publication Stuff, picked up and re-published the allegations. The content of the Stuff reports on the evening of 19 June 2015 are consistent with information provided to Whaleoil by Mr Stringer who had also sent an email to the board written in terms highly critical of Mr Craig's behaviour.

**Publication 4<sup>17</sup> – Whaleoil – 20 June 2015, 8.30 am**

[271] Early on 20 June 2015, Mr Stringer appeared in an interview on TV3's "The Nation" programme, in which he alleged that what Mr Craig had continually told the board was not true; that there were allegations of an inappropriate relationship between Mr Craig and Ms MacGregor, including allegations of sexual harassment, and that

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<sup>17</sup> Causes of action based on statements pleaded as Publications 2 and 3, which were contained in Whaleoil blogs dated 24 April 2015 and 20 June 2015, were abandoned at the hearing.



Mr Craig's statement on Radio Live that no board member had ever raised a concern with him about an inappropriate relationship with Ms MacGregor was completely untrue. Mr Stringer said that the Party had put a chaperone system in place because of concerns about Mr Craig's relationship with Ms MacGregor.

[272] Mr Craig sent an email to Mr Stringer later in the day saying he was very disappointed by Mr Stringer's public comments on "The Nation", that many of them were incorrect and personally damaging, and that he would be requiring a written retraction from Mr Stringer.

[273] Further Whaleoil blogs were published on 20 June. At 8.30 am, Mr Slater posted a blog headed, "WILL THE CONSERVATIVE PARTY SURVIVE COLIN CRAIG?" Mr Slater answered the headline, "No. Oh, they may still run in the next election, and perhaps one more, but they won't make it into Parliament." He observed that what would happen was that Mr Craig's opponents, who wanted to make sure that he would not "worm his way back into any position of true influence", would start a steady drip-feed of documents to the media to ensure that Mr Craig could not recover from the blow of standing down. He said there were more allegations to come, concerning financial issues and contractual issues, "sleight-of-hand" with loans and GST rebates. He also referred to letters written by a married man putting pressure on a woman financially, and to unsolicited and unwanted text messages, some of which were "so lewd" they were "SXT messages".

[274] Mr Slater suggested that the Conservative Party board was fully aware of all of those issues and that a lot of the material that was now in the hands of the news media had been provided by the board in an effort to destabilise Mr Craig. Nevertheless, Mr Slater said that the Party had made a mess of the opportunity to revive itself under new leadership and that Mr Craig was sure that he would be the leader again after having stood down for a few weeks. The statement is pleaded by Mr Craig as being defamatory: Publication 4.

### **Publication 6 – Whaleoil – 20 June 2015, 4.30 pm**

[275] Mr Slater posted again on the Whaleoil site at 4.30 pm on 20 June 2015. He referred to members of the Conservative Party board having finally cracked and said they had decided to confront publicly "the untruths of Colin Craig" as his political dreams came crashing down. He said that Mr Craig had only himself to blame "for constantly covering up and misleading the board about his actions." He then quoted from a New Zealand Herald article which referred to Mr Stringer's appearance on TV3 earlier that morning. Saying that Mr Craig had earlier denied that any board members had raised concerns about his relationship with Ms MacGregor or accused him of being dishonest, Mr Slater then quoted the New Zealand Herald's report, which in turn quoted Mr Stringer as saying, "That is completely untrue, because the board has discussed this almost monthly for nearly a year." Mr Slater then repeated a section of the New Zealand Herald article in which Mr Stringer was quoted as saying that a chaperone had been appointed to Mr Craig at the request of Ms MacGregor to try and shift public perceptions of him.

[276] Mr Slater added:

If this carries on much more I predict death by a thousand cuts as TXT, SXTS and more musings from "Creative Colin" make their way into the public view.

Mr Craig pleads that these statements were defamatory: Publication 6.<sup>18</sup>

### **Publication 18 – Peter Belt (Whaleoil) letter – 20 June 2015, 4.45 pm**

[277] About 15 minutes after that post on Whaleoil, Mr Belt sent an email to Lawrence Day and three other Conservative Party board members; he copied it to Mr Craig and Mr Slater. He said that Whaleoil was working on an update for 5.30 pm based on information received from within and outside the Conservative Party. Observing that he realised he was not giving the recipients much time to respond, he asked the four board members to confirm, deny or comment on the assertions that Mr Craig was not standing down at all, that knew he had the numbers to withstand the

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<sup>18</sup> A cause of action which relied upon a blog posted at 8.30 am on 20 June 2015 was pleaded as Publication 5 but was abandoned at trial.

challenge to his leadership and that the four of them were the ones supporting Mr Craig during the "coup".

[278] Mr Belt then said that part of a payment of approximately \$107,500 had been made to settle employment issues and that the other part was to ensure “the party involved” did not make the sexual harassment allegations public. He referred to Whaleoil and other media organisations holding documented proof of poems, text messages and other documents and suggested that it was beyond dispute that Mr Craig had sought a relationship while married and while a Conservative Party leader. He asked whether the recipients had been given access to the documents by Mr Craig or other board members; whether they had seen them or read them; and asked what their position was on that material. Mr Belt then asked whether they were willing to comment on the reasons behind their decision to stand behind a person who has clearly sought an extra marital relationship, paid money to silence the person and why they thought this was the basis for the Conservative Party to continue with Mr Craig at the helm.

[279] On the basis that this was a publication to the four Conservative Party board members, Mr Craig pleads that SMCL, as publisher of Whaleoil on whose behalf Mr Belt had sent the letters, defamed him: Publication 18.<sup>19</sup>

[280] Mr Craig replied to Mr Belt's email at 5.58 pm, saying he was commenting only in a personal capacity. He said that it was very clear from media statements, which he attached, that he had stood down from the leadership and that he would consider putting his name forward again for the leadership if he had the support of the membership. Responding to Mr Belt's statements about settlement claims and other allegations, Mr Craig said:

I find it very surprising that Cameron went public on this before doing his homework. Sloppy. You will hear from my legal team in due course. The reality and what you think you know are well removed.

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<sup>19</sup> The pleading of this publication is numbered out of chronological sequence. It is a claim against the second defendant SMCL only.

He said he had been advised that the board had material of concern and that once he was given access to that he would respond to the board.

[281] Mr Belt sent an email thanking Mr Craig for his response and said they (Whaleoil) would take it on board and reflect on it. Mr Stringer sent copies of his exchange of emails with Mr Craig following Mr Stringer's appearance on "The Nation" to the other members of the Conservative Party board, and also to Mr Slater, with his own comments.

**Publication 7 – Whaleoil – 21 June 2015, 8.30 am**

[282] At 8.30 am on 21 June 2015, Mr Slater posted a blog headed "EXCLUSIVE: EMAILS REVEAL CONSERVATIVE PARTY MELTDOWN". He quoted directly from emails sent by Mr Stringer, Mr Craig and Mr Day to members of the board, and from an email sent by Mr Day to Whaleoil. The blog post included statements in one of Mr Stringer's emails as follows:

I am disappointed half of us were missing tonight from the special meeting called to discuss these matters "(that are of some years standing)". We had documentary evidence in the form of hand written notes, letters signed by Colin, his SXTs and emails for you to see, and I wanted to hear Colin's side of the story.

...

I have ... spoken to the media tonight to protect my own reputation and that of the Party from a man who is morally bankrupt and has lied to us as a Board for months and months.

The explicit and salacious details of Colin's indiscretions with women other than his wife will be leaked out every day over the next several days by several media outlets and from numerous sources. His large payout to one victim is already being discussed.

... Let the cards fall where they may. But Colin's tenure as a leader of anything political is over as his victims begin to speak out.

[283] Mr Craig pleads that these statements, quoted by Mr Slater, are defamatory: Publication 7. This publication is notable for the references in Mr Stringer's email to Mr Craig having more than one victim.

### **Mr and Mrs Craig's media conference – 22 June 2015**

[284] On the afternoon of 22 June 2015, Mr and Mrs Craig held a media conference at which they both read prepared statements and Mr Craig then answered questions. Mr Craig said he intended to address, "the wild speculations and allegations" being made about his dealings with Ms MacGregor and said he had previously met with her and that they had resolved outstanding matters. He said, however, that, "a lack of detail to media has resulted in some people filling in the gaps very creatively" and that he would be "setting the record straight."

[285] Mr Craig said that he had paid Ms MacGregor \$16,000 as the balance of her agreed payment for services rendered in 2014, some of which had been paid in advance. He also said that Mrs Craig and he had agreed to an interest-free loan of just under \$20,000 to enable Ms MacGregor's credit card debts to be cleared but that Ms MacGregor went into default on the repayment of the loan and was unable to make payment. She requested that the loan be forgiven on compassionate grounds and Mrs Craig and he decided to do that.

[286] Mr Craig then said there had "been a great deal of wild and inaccurate speculation about a sexual harassment claim that may have been made against" him. He said that the widespread circulation of inaccurate information was completely inconsistent with the basis on which he sought to resolve his differences with Ms MacGregor and that he was reluctantly "forced to respond." Mr Craig said that his working relationship with Ms MacGregor was positive and constructive and that he was grateful for the good work she did for the Party and her assistance in handling the media. He said that, in hindsight, "on some occasions" their conduct was inappropriate and that they had acknowledged that so that they could both move on. Mr Craig said he wished to make it very clear that he had never sexually harassed anyone and any allegations to the contrary were wrong.

[287] Mrs Craig then read her statement in which she said that she had chosen to stand by her husband in full love and support of him, believing he had been falsely accused. She said that the last few days had been difficult with wild and defamatory

allegations being thrown around by the media, particularly "as the speculations related to allegations already withdrawn."

[288] When pressed to give more detail about how far Ms MacGregor's complaint went, Mr Craig refused, saying it was covered by confidentiality and it would be disclosing things related to another party. He said that he had given the outcomes of the discussions and that, rather than saying what the allegations were along the way, what mattered was where they came to an end. He would not say what was inappropriate but acknowledged that he had breached the confidentiality agreement with Ms MacGregor by holding the media conference and talking about items that were contained within the agreement. Mr Craig refused to give examples of any of his behaviour which had been questionable or which he regretted, saying it was a private matter. He confirmed that the only way he would consider putting his hand forward for leader of the Conservative Party again was if the grass roots membership overwhelmingly supported that.

[289] Understandably, Ms MacGregor considered Mr Craig's statements and responses at the media conference to have been a serious breach of the agreement between them that neither of them would make any comment to the media or third parties other than a statement that they had met and resolved their differences. By telling the media about Ms MacGregor's financial difficulties, and by saying that she had acknowledged being guilty of inappropriate conduct, Mr Craig denigrated her in circumstances where she had no opportunity to respond. Moreover, any kind of response from Ms MacGregor could only have intensified and prolonged media attention which was wholly unwelcomed by her. Ms MacGregor issued proceedings under ss 89 and 92B(4) of the Human Rights Act seeking, among other things, a declaration that Mr Craig had breached the terms of the settlement; an order restraining him from further breaches and damages for humiliation, loss of dignity and injury to her feelings.

[290] Ms MacGregor's claims were heard by the Human Rights Review Tribunal in December 2015. The Tribunal delivered a comprehensive decision on

2 March 2016.<sup>20</sup> The Tribunal's findings are not binding on this Court and do not provide admissible evidence in this proceeding of what occurred between Mr Craig and Ms MacGregor, but the views expressed largely coincide with the views I formed after considering similar evidence to that which was before the Tribunal. The findings are relevant to an assessment of Mr Craig's reputation and the extent to which he is entitled to damages for any remediable defamation I have held to be proved. As well, they aid an understanding of the hostility Ms MacGregor displayed towards Mr Craig during her evidence. In summary, the Tribunal held that:

- (a) Mr Craig had breached the confidentiality of the settlement agreement with Ms MacGregor in a manner described variously as deliberate, systematic, egregious and repeated.
- (b) Mr Craig released carefully selected information not to avoid breaching confidentiality as little as possible, but to paint himself as a person who had been falsely accused by a woman who was clearly incapable of managing her money and to make an inference that she was seeking money through the sexual harassment complaint. His actions were deliberate, sustained and calculated.
- (c) Mr Craig's breaches were choreographed in such a way as to attract maximum publicity and attention at a national, not local, level. The result was that Ms MacGregor was stigmatised as having engaged in sexually inappropriate behaviour and as being a person who could not manage or control her own finances.

[291] The Tribunal placed the case in the most serious category of breaches of the confidentiality obligations which participants owe under the Human Rights Act, and regarded it as justifying an award of compensation to Ms MacGregor of \$120,000 for humiliation, loss of dignity and injury to her feelings.

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<sup>20</sup> *MacGregor v Craig* [2016] NZHRRT 6, (2016) 11 HRNZ 91.

### **Publication 9 – Whaleoil – 23 June 2015, 10.00 am**

[292] On the day after Mr and Mrs Craig's media conference, Mr Slater published a further blog post headed "CONSERVATIVE PARTY BOARD MEMBER JOHN STRINGER RESPONDS TO YESTERDAY'S PRESS CONFERENCE". The post reportedly repeated a statement made by Mr Stringer in which he accused Mr Craig of lying to the Conservative Party board when denying any sexual impropriety or inappropriate behaviour. The post said there was confusion over "what was paid and for what." That is Publication 9 in Mr Craig's pleadings of defamatory statements.<sup>21</sup>

### **Approach to Mr Slater by Ms Madeleine Flannagan**

[293] Ms Madeleine Flannagan is a barrister practising in Ōrewa. She works mostly in family law and in 2014 she began acting for Mr and Mrs Craig in an adoption matter. By mid-June 2015, Ms Flannagan was involved in discussions with Mr and Mrs Craig and the other parties to the adoption proceedings with a view to drafting a final application. By coincidence, Ms Flannagan had known Mr Slater for about eight years at that time. She became aware through radio reports of allegations concerning Mr Craig and the Conservative Party and references to Mr Slater having published material about that on Whaleoil. Ms Flannagan said that references to non-specified sexual harassment allegations she had heard on the radio about Mr Craig had the potential to have an impact on the final application. She looked at the Whaleoil website and saw that, in one of his posts, Mr Slater had talked about a dossier of information and suggested that the dossier contained more information than was then available publicly.

[294] Mr and Mrs Craig had to make their application for a final adoption order between 15 June 2015 and 15 December 2015. Ms Flannagan said she needed to know what allegations they were potentially dealing with and that she did not have a lot of time to just wait and see how things played out in the media. She discussed those matters with her clients and said that Mr and Mrs Craig were concerned also that

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<sup>21</sup> Allegedly defamatory statements made by Mr Slater in a Whaleoil blog post on 22 June 2015 were initially pleaded by Mr Craig as Publication 8. The cause of action that relied upon them was abandoned prior to the trial.



if more allegations were published about Mr Craig and the Conservative Party it might negatively affect their application. They told Ms Flannagan that they did not know what else might be published or what was in the dossier because, already, things had been published that they said were not true. Ms Flannagan said that she considered she knew Mr Slater well enough to call and ask him what else was coming. After she discussed that with Mr and Mrs Craig, they agreed that she should contact Mr Slater and try to get the information without disclosing to Mr Slater that she acted for them or anything about the nature of their case.

[295] On 24 June 2015, Ms Flannagan called Mr Slater and asked him what further information about Mr Craig he had and whether he could get her a copy of the dossier or put her in touch with someone who could. She told Mr Slater that she was asking about the dossier for a client as it might impact on the matter she was dealing with in which Mr Craig was a factor. She told Mr Slater that the details about the client and the nature of the matter were privileged and that her client had not authorised her to disclose those things. She said she made it clear that the conversation had to remain between Mr Slater and her and that he assured her it would.

[296] Ms Flannagan said that Mr Slater appeared to assume that her client was "another victim" of Mr Craig who was making some kind of Human Rights Commission or employment complaint against him, or similar. She said she immediately tried to dissuade him from that idea but it was difficult as she was mindful that she could not say anything too specific that might identify or narrow the issues. She had to pick her words carefully but she says that she told Mr Slater that the case she was acting in was quite different, or words to that effect. She said that she knew Mr Slater was aware of her areas legal practice and that she hoped her words and his reflecting on that would inform him that he might be wrong.

[297] Mr Slater told Ms Flannagan that, although he did not personally have the dossier, he would try and put her in touch with the person who did. He did not say who that person was but said he was privy to further information that was yet to come out and that he was still working on it and putting it together. He made hints to Ms Flannagan that it was going to be in the same vein as what had come out and it would be bad for Mr Craig. Ms Flannagan made a file note of the conversation.

[298] On the following day, Mr Slater called Ms Flannagan. He wanted to know details about her client and what the matter involved. Ms Flannagan said that she advised him again that she could not tell him as it was legally privileged and he asked her to encourage her client to speak to him. Ms Flannagan said that she told Mr Slater the odds of that were highly unlikely. She said Mr Slater still appeared to believe that the matter might involve a "victim" of Mr Craig. She said, in response to that suggestion, that she told Mr Slater, as she had done previously, that it was not what he thought it was and that the case she was acting in was quite different, or words to that effect. She made a file note of that conversation also. It appears there was no further discussion between Mr Slater and Ms Flannagan around that time.

**Publication 10 – Whaleoil – 26 June 2015, 12.30 pm**

[299] On the basis of his conversations with Ms Flannagan on 24 and 25 June 2015, Mr Slater made a further post on Whaleoil at 12.30 pm on 26 June 2015, headed "THE DELUSIONS OF SMALL PARTIES AND THE STUPIDITY OF THE MEDIA". In it, Mr Slater described Mr Craig as "a weirdo and political spastic" and said, among other things, that he also happened to know that there was at least one other victim out there with similar circumstances. He called Mr Craig's behaviour towards women "poor and disgusting". Mr Craig identifies those statements as Publication 10 in his pleadings.

**Publication 11 – Whaleoil – 28 June 2015, 10.30 am**

[300] At 10.30 am on 28 June 2015, in a post entitled "IT'S ALL 'BOUT THE MONEY, DUM DUM", Mr Slater referred to Mrs Craig's support of her husband but commented "I bet she won't be so forgiving when the Sext bombs start dropping". This is pleaded as defamatory Publication 11.

**Publication 12 – Whaleoil – 28 June 2015, 1.00 pm**

[301] Later that day, at 1.00 pm, Mr Slater published a blog post, "SEX SCANDAL WITHOUT THE SEX". He said, quoting former member of parliament, Mr Rodney Hide, that Mr Craig may well have achieved some considerable power had Ms MacGregor not resigned two days out from the 2014 election declaring him "a

very manipulative man". Mr Hide was reported as saying that that comment, from a young woman who was working closely with Mr Craig and supporting him, caused many Conservative voters to rethink their vote. Mr Slater referred Mr Craig as someone "who misuses his power over subordinates to try and sleep with them." Mr Craig pleads this as defamatory Publication 12.

**Publication 14 – Whaleoil – 1 July 2015, 4.00 pm**

[302] By 24 June 2015, all members of the Conservative Party board, apart from Mr Dobbs, Mr Day and Mr Stringer, had resigned. Mr and Mrs Craig sent a letter to members of the Conservative Party in which they assured members that it was not the case that Mr Craig had sexually harassed a staff member and that the allegations were false and had been withdrawn. They said that while there was no harassment and no sexual relationship there were some occasions where the conduct of Mr Craig and the staff member was inappropriate. Enclosed with each letter was a free-post response form in which members were invited to indicate whether they wished Mr Craig to continue in politics, whether as party leader or otherwise.

[303] By 26 June 2015, both Mr Dobbs and Mr Day had also resigned from the Conservative Party board, leaving Mr Stringer the only member. Mr Stringer was reported as attempting to recruit board members while Mr Craig was also reported as saying that he was "poised to snatch back the Conservative Party".

[304] At 4.00 pm on 1 July 2015, Mr Slater published a further post on Whaleoil headed, "20 FAIR QUESTIONS FOR COLIN CRAIG". The questions raised issues of Mr Craig's honesty on a variety of topics, including the filing of electoral returns; a second sexual harassment case against him by another of his female employees; statements to the media in late 2014 about Mr Baldock's departures from the board and Conservative Party; making "a large payout" in a sexual harassment claim and hiding the details by a strict confidentiality agreement; and misdirecting the board over the payout.

[305] Although the statements are in the form of questions addressed to Mr Craig by Mr Slater in the blog post, Mr Craig alleges it would be understood by an ordinary

reader having relevant knowledge of the background to contain implied assertions or statements of fact which are defamatory of him. He pleads this post as Publication 14.<sup>22</sup>

**Publication 15 – Whaleoil – 8 July 2015, 10.00 am**

[306] Changes to the board membership of the Conservative Party continued. On 2 July 2015, Mr Stringer sent to the Party Secretary, Mr Nathaniel Heslop, a notice of his intention to resign from the board at 10.30 am that day. Mr Heslop issued a press release on 4 July 2015 saying that Mr Stringer had resigned, that a provisional board had been established and that a new board would be elected later in the year. Mr Craig wrote to Mr Heslop on 6 July 2015 asking for information as to his membership status, Mr Stringer's membership status and whether certain decisions of "the last board" would be honoured and implemented. Although Mr Heslop had resigned from the board on 23 June 2015, he did not resign as Party Secretary.

[307] At 10.00 am on 8 July 2015, Mr Slater posted again on the Whaleoil site, under a headline quoting the Monty Python film, *Life of Brian*: "HE'S NOT THE MESSIAH, HE IS A VERY NAUGHTY BOY." Referring to Mr Craig's letter to Conservative Party members seeking to gauge support for his return as leader, Mr Slater referred to Mr Craig's statements that the allegations of sexual harassment were false and had been withdrawn. Mr Slater said that he had not withdrawn any of his allegations and that he stood by everything he had stated. Mr Craig pleads this as defamatory Publication 15.

**Publication 16 – Whaleoil – 18 July 2015, 10.00 am**

[308] On 18 July 2015 at 10.00 am, Mr Slater posted an item on the Whaleoil site headlined: "BEHIND THE SCENES OF THE COLIN CRAIG CATASTROPHE". It quoted public statements by Mr Stringer, including a passage quoted by Mr Slater accusing Mr Craig of witch-hunting Mr Baldock out of the Party. This is pleaded as Publication 16. It addresses the circumstances discussed above at [221] – [223].

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<sup>22</sup> An allegedly defamatory statement by Mr Slater in a further Whaleoil blog post on 28 June 2015, initially pleaded as Publication 13, was abandoned prior to the trial.

## **Publication 17 – *One News Now* – 29 July 2015**

[309] Mr Craig considered the stream of articles attributed to Mr Slater on the Whaleoil blog site to be part of an orchestrated “dirty politics” campaign involving Mr Slater, Mr Williams and Mr Stringer. On 29 July 2015, Mr and Mrs Craig held a media conference at which they announced the publication of a 10-page booklet entitled “Dirty Politics and Hidden Agendas” that was subsequently delivered to over 1.6 million New Zealand homes at a cost to Mr Craig of over \$280,000. Advance copies of the booklet were distributed to the news media representatives who attended the media conference. Later that day, Mr Slater was quoted on the *One News Now* website managed by Television New Zealand, as saying (in response to Mr Craig’s announcement that he was suing Mr Slater, Mr Williams and Mr Stringer):

... The truth is quite the defence, and now he is forcing me to pull his life apart bit by bit inside a Courtroom ... we have only dealt in verifiable fact.

[310] It is pleaded that this is a further publication of all of the defamatory statements alleged to have been made in Publications 1 to 16, on the basis that Mr Slater was confirming that the defamatory meanings alleged to have been made by those statements were verifiable and true.

### **THE DIRTY POLITICS AND HIDDEN AGENDAS BOOKLET**

[311] In the statement made by Mr Craig at the media conference he conducted with Mrs Craig on 29 July 2015, Mr Craig said that standing down from the leadership of the Conservative Party gave him a better understanding of what he called “a strategy” by a group of people to remove him as leader of the Party. He labelled them “the Dirty Politics Brigade”. Mr Craig said that the day was a good day because it was the day “we start to fight back against the Dirty Politics Brigade who have been running a defamatory strategy against me.”

[312] Mr Craig said that the booklet addressed what he called, “A campaign of defamatory lies” to undermine his public standing and referred to some of the false claims by the Dirty Politics Brigade, including that he had sexually harassed one or more persons and had made a payout or payouts to silence people. Mr Craig said that the only payment he had made to Ms MacGregor was the amount of \$16,000 in part

payment of her final invoice and that the suggestions of large sums of "hush money" being paid were "utterly wrong and seriously defamatory." He also said the allegation that he had sent sexually explicit text messages was false. Mr Craig said that the fourth false claim was that there was another alleged "victim" of sexual harassment.

[313] Mr Craig also announced that he would be making defamation claims against Mr Williams, Mr Stringer and Mr Slater, who were identified in the booklet as members of the Dirty Politics Brigade. Mr Slater's counterclaim alleges two separate causes of action, both of which arise from the booklet. It is discussed more fully below.

### **THE TORT OF DEFAMATION AND THE PLEADED DEFENCES**

[314] Before considering the implications for this proceeding of what Mr Slater and Mr Craig are alleged to have said, both in terms of Mr Craig's allegations that he was defamed and the counterclaim by Mr Slater, it is convenient to provide a summary of the legal principles which apply.

#### **Proof that the author published a statement that was defamatory**

[315] To prove the tort of defamation, a claimant must establish that the author published a statement about the claimant that was defamatory. Different formulations to describe defamatory statements have been used by different courts. The most commonly cited is that of Lord Atkin, who said that a defamatory statement is one that may tend to lower the claimant in the estimation of right-thinking members of society.<sup>23</sup> Others have referred to a false statement about the claimant to their discredit,<sup>24</sup> or one calculated (that is, likely) to injure their reputation by exposing them to hatred, contempt or ridicule.<sup>25</sup> So, looking at the effect of the statement on the opinions of other people, the question is whether the statement is likely to have an adverse effect on their attitude towards the claimant.<sup>26</sup>

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<sup>23</sup> *Sim v Stretch* [1936] 2 All ER 1237 (HL) at 1240 per Lord Atkin.

<sup>24</sup> *Youssouf v MGM Pictures Ltd* (1934) 50 TLR 581 at 584 per Scrutton LJ.

<sup>25</sup> *Parmiter v Coupland* (1840) 6 M & W 105 at 108 per Parke B.

<sup>26</sup> Alastair Mullis and Richard Parkes (gen eds) *Gatley on Libel and Slander* (12<sup>th</sup> ed, Sweet & Maxwell, London, 2013) at [2.1]; *Berkoff v Burchill* [1996] 4 All ER 1008 (EWCA) 1018 per Neill LJ.

[316] The claimant is required to plead what imputation or meaning is alleged to have been contained in the allegedly defamatory statement. If the natural and ordinary meaning of the words used accords in substance with the pleaded meanings, the imputations have been proved.<sup>27</sup> Judging the matter by what the ordinary reasonable reader would understand the words to mean in their context, the court must be satisfied that the imputations or meanings are defamatory in nature.

[317] Although not being precluded from establishing that the publication did not convey the meanings asserted by the claimant, an author must also plead to the defamatory meanings pleaded by the claimant and not to alternative meanings which the author contends the words bear.<sup>28</sup>

[318] Proof that a defamatory statement has been made about the claimant by the author establishes a prima facie case that the claimant's reputation has been injured by the statement and that the author is liable. That may be countered by a pleaded defence. The law presumes that a person has a good reputation.<sup>29</sup> It is not pleaded in this case that either Mr Craig or Mr Slater had a bad reputation in any relevant respect.

*Were the statements published by the parties alleged to have made them?*

[319] The pleaded causes of action based on the statements in Publication 1 and Publication 17 are directed by Mr Craig at Mr Slater only; it is not alleged that SMCL published those statements. Mr Craig pleads that Mr Belt was acting solely on behalf of SMCL in making the statements in the letters forming Publication 18. The cause of action based on that publication is brought against SMCL only.

[320] Publication 1 comprises Mr Slater's statements to the *Newstalk ZB* interviewer, knowing that they were being broadcast to *Newstalk ZB's* radio audience. Publication 17 comprised Mr Slater's statements as quoted on the *One News Now* website. A person who originates a defamatory statement may be liable for the repetition of it

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<sup>27</sup> The principles for determining this are set out in *New Zealand Magazines Ltd v Hadlee (No 2)* [2005] NZAR 621 (CA) at 625.

<sup>28</sup> *Television New Zealand Ltd v Haines* [2006] 2 NZLR 433 (CA) at [54]–[67] and [98]; *Gatland v Fairfax New Zealand Ltd* [2016] NZHC 970 at [62]–[67].

<sup>29</sup> Alastair Mullis and Richard Parkes (gen eds) *Gatley on Libel and Slander* (12<sup>th</sup> ed, Sweet & Maxwell, London, 2013) at [32.63]. See also *Channel Seven Sydney Pty Ltd v Mahommed* [2010] NSWCA 335 at [153].

by another (in this case, *Newstalk ZB* and *One News Now*) if that repetition was foreseeable as the natural and probable consequence of the original publication.<sup>30</sup>

[321] I am satisfied that Mr Slater knew, because of the widespread news media and public interest in the matter of Mr Craig's leadership of the Conservative Party; his resignation from that role; Ms MacGregor's allegations of sexual harassment; the part they played in her resignation (if any) and Mr Craig's responses to them, that his statements would be picked up by, and likely repeated by, other news media so that the coverage of them would extend well beyond *Newstalk ZB's* listeners or the readers of the *One News Now* website. Mr Slater acknowledged as much in cross-examination, regarding the *Newstalk ZB* interview, at least.

[322] I find that the publications were made by the respective defendants, as pleaded in each of Mr Craig's causes of action. It is not disputed that Mr Craig published the statements on which Mr Slater's counterclaims are based.

#### **Are the statements relied upon statements of fact or opinion?**

[323] It is necessary in respect of each cause of action to determine whether the statements relied upon were statements of fact or expressions of opinion by the author. If they were merely expressions of opinion, different considerations arise. The ultimate question is how the words would strike the ordinary, reasonable reader; presentation is critical to the assessment of whether a statement is or is not an expression of opinion.<sup>31</sup>

[324] If the statements relied upon were statements of fact, it will be necessary to determine in each case whether they carried the pleaded imputations or meanings, and whether those meanings were defamatory. Those issues are addressed below in respect of each publication.

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<sup>30</sup> Stephen Todd *The Law of Torts in New Zealand* (7th ed, Thompson Reuters, Wellington, 2016) at 879. See also *Leigh v Attorney-General* [2010] NZCA 624, [2011] 2 NZLR 148 at [60].

<sup>31</sup> *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) at [17]–[18].



## Truth

[325] The first of the substantive defences pleaded by Mr Slater and Mr Craig in response to the causes of action alleging defamation is that the statements were true. Although any statement may cause reputational damage to a person, a defamatory statement will be actionable and result in an award of damages only if it is untrue. The claimant is not required to prove as an element of the tort that the statement was untrue. Section 8(3) of the Defamation Act 1992 provides that a defence of truth will succeed if the defendant (that is, the maker of the statement or author) proves either:

- (a) that the imputations contained in the statement were true, or not materially different from the truth; or
- (b) where the proceeding is based on all or any of the statements contained in a publication, that the publication taken as a whole was in substance true, or was in substance not materially different from the truth.<sup>32</sup>

[326] To establish a defence of truth, it is not sufficient to establish that the statements are true in one general respect only; the author must prove that all the related meanings are true.<sup>33</sup> But a failure to prove the truth of minor details of the statement will be immaterial so long as the author can prove the truth of the ‘sting’ of the defamation.<sup>34</sup> Where the words complained of contain several distinct allegations, if the author proves the truth of some of the allegations but not others there are two possible consequences. First, if the remaining allegations are defamatory and injure the claimant’s reputation, the author will be liable for damages in respect of those, but not for the others. That would have the effect of reducing the quantum of damages.

[327] Alternatively, where the claimant has brought a claim concerning only some of the statements contained in a publication, the author may allege and prove the truth of facts contained in the whole of the publication.<sup>35</sup> The failure to prove the truth of

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<sup>32</sup> *Lange v Atkinson* [1998] 3 NZLR 424 (CA) at 435.

<sup>33</sup> *Reeves v Saxon* CA134-89, 17 December 1992 at 20.

<sup>34</sup> *Television New Zealand v Haines* [2006] 2 NZLR 433 (CA) at [55].

<sup>35</sup> Defamation Act 1992, s 8(2).

one of the allegations does not defeat the complete defence of truth if the words not proved to be true are immaterial in the overall context.<sup>36</sup>

[328] An author who has republished a statement of a defamatory nature made by another must prove the truth of the primary facts underlying the republished statement.<sup>37</sup> It is not sufficient for the author to simply assert truth on the basis that the allegations were communicated to them.<sup>38</sup>

### **Honest Opinion**

[329] A mere comment or opinion, such as in a restaurant review<sup>39</sup> or in the review of an opera,<sup>40</sup> will not usually give rise to liability in defamation. As the learned authors of *The Law of Torts in New Zealand* say, the defence of honest opinion:<sup>41</sup>

... is the very essence of freedom of speech: the right that citizens should be able openly to air their views and exchange criticisms on matters which concern them. “Honest opinion” thus protects such persons as ... persons commenting on the news in the broadcast media ... and now, the posters of comments on websites, blogs and social media.

[330] There are broadly three requirements that need to be established to succeed in a defence of honest opinion. The author must show, first, that the words complained of were an expression of opinion that is recognisable as such, and not an imputation of fact. The ultimate question is how the words would strike the ordinary, reasonable reader; presentation is critical to the assessment of whether a statement is or is not an expression of opinion.<sup>42</sup> If the words complained of are found to be an opinion, the author must next be able to point to the existence of true facts upon which the opinion is based. That is because a sufficient factual basis for the opinion will allow the audience or reader to “assess the validity of the opinion for themselves against the

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<sup>36</sup> Stephen Todd *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at 913.

<sup>37</sup> *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [27] and [35], adopting *Musa King v Telegraph Group Ltd* [2004] EWCA Civ 613 at [22].

<sup>38</sup> At [26].

<sup>39</sup> *Gacic v John Fairfax Publications Pty Ltd* [2013] NSWSC 1920.

<sup>40</sup> *Associated Newspapers Ltd v Burstein* [2007] EWCA Civ 600, [2007] 4 All ER 319.

<sup>41</sup> Stephen Todd *The Law of Torts in New Zealand* (7th ed, Thomson Reuters, Wellington, 2016) at 897 (footnotes omitted).

<sup>42</sup> *Mitchell v Sprott* [2002] 1 NZLR 766 (CA) at [17]–[18].

relevant facts truly stated.”<sup>43</sup> Third, the author must show that in making the statement, the opinion was genuinely held.

[331] Although the defendants have pleaded reliance on the defence of honest opinion in response to Mr Craig’s claims, I do not need to discuss the legal principles any further. As I have explained below in discussing the individual causes of action, I find that the statements published by the defendants on which Mr Craig has relied were statements of fact and not expressions of opinion.

***Lange v Atkinson* qualified privilege / new defence of responsible communication on a matter of public interest**

[332] In this proceeding, the defendants pleaded in defence that the statements in their publications that Mr Craig has claimed were defamatory were “protected by qualified privilege (*Lange v Atkinson*)” or “protected by qualified privilege”. The pleading was founded on the principles developed by the Court of Appeal in *Lange (No 1)*<sup>44</sup> and *Lange (No 2)*,<sup>45</sup> cases that concerned a defamation action taken by a former New Zealand prime minister, the Right Honourable David Lange. At the trial, the parties provided helpful submissions addressing the applicable principles and the relevant evidence.

[333] After the completion of the hearing in this proceeding, however, the Court of Appeal recognised in *Durie v Gardiner*<sup>46</sup> the existence of a new defence of communication on a matter of public interest that is not confined to parliamentarians or political issues, but extends to all matters of significant public concern and is subject to a responsibility requirement.<sup>47</sup> The Court concluded that the *Lange v Atkinson* qualified privilege should no longer be an available defence, being effectively subsumed in the new public interest defence.<sup>48</sup>

[334] The effect of the Court of Appeal’s decision is to apply the new defence retrospectively to publications made before the Court’s judgment. *Durie v Gardiner*

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<sup>43</sup> *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [18].

<sup>44</sup> *Lange v Atkinson* [1998] 3 NZLR 424 (CA).

<sup>45</sup> *Lange v Atkinson* [2000] 3 NZLR 385 (CA).

<sup>46</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131.

<sup>47</sup> At [56].

<sup>48</sup> At [86].

is a pre-trial decision; the Court directed the defendant to amend its pleading. There is no reason in principle not to apply the new defence to this case, even though the trial has been conducted on a different basis. It has been necessary, however, to consider whether the change in the law resulting from the Court of Appeal's recent judgment in *Durie v Gardiner* may fairly be applied to this case without calling for further evidence and argument. That has required consideration of whether the law has changed in such a way as to make it unfair to either Mr Craig or the defendants to apply the law as now stated by the Court of Appeal to facts determined by reference to evidence given when different legal principles applied.

*The Lange v Atkinson qualified privilege*

[335] In the two *Lange* cases, the Court of Appeal established that, in New Zealand, a defence of qualified privilege could be recognised in relation to political discussion and publications about those elected or seeking election to Parliament. It was held that the wider public may have a proper interest in respect of generally-published statements which directly concern the functioning of representative and responsible government, including statements about the performance or possible future performance of specific individuals in elected public office.<sup>49</sup> In particular, a proper interest was held to exist in respect of statements made about the actions and qualities of those currently or formerly elected to Parliament, and those with immediate aspirations to such office, so far as those actions and qualities directly affect or affected their capacity (including their personal ability and willingness) to meet their public responsibilities.<sup>50</sup>

[336] As the *Lange v Atkinson* privilege was founded in the public interest, it afforded a defence in limited circumstances even when the author's statements about the claimant may have been both defamatory and untrue.<sup>51</sup> It was only those matters that were properly of public concern rather than private concern, and that directly concern the functioning of representative and responsible government, that were protected.<sup>52</sup> The privilege was not available automatically simply because the

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<sup>49</sup> *Lange v Atkinson* [1998] 3 NZLR 424 (CA) at 468.

<sup>50</sup> At 468.

<sup>51</sup> At 436; *Durie v Gardiner* [2017] NZHC 377, [2017] 3 NZLR 72 at [42].

<sup>52</sup> *Lange v Atkinson* [2000] 3 NZLR 385 (CA) at [12].

statement was about a politician or aspiring politician. To attract the privilege, it was necessary that the statement had been published on a qualifying occasion.<sup>53</sup>

[337] In determining whether the occasion was one that attracted the privilege, it was necessary to consider the circumstances of the publication, including such matters as the identity of the publisher, the context in which the publication occurs, the likely audience, and the actual content of the information.<sup>54</sup> It was also relevant in that regard to consider the purpose of the privilege, which was to facilitate responsible public discussion of the matters which it covers.

[338] By s 19 of the Defamation Act 1992, a defence of qualified privilege will be lost where the claimant proves that there has been misuse of the occasion, either through the author being predominantly motivated by ill will towards the claimant, or otherwise taking improper advantage of the occasion of publication. The rationale underlying the privilege is that it is granted on the basis that it will be responsibly used. Improper advantage encompasses irresponsibility, through recklessness.<sup>55</sup> The degree of responsibility required is determined objectively and will depend on the nature of the allegation and the width of the dissemination.<sup>56</sup> In some circumstances, to give such responsible consideration to the truth of the publication as is required by the nature of the allegation and the width of the intended dissemination, there may be a need for the taking of reasonable care.

[339] Recklessness or indifference to the truth will preclude the author from asserting a genuine belief.<sup>57</sup> Recklessness can arise if the author failed to give such responsible consideration to the truth or falsity of the statement as should have been given in all the circumstances. The privilege may well be lost if the author takes what in all the circumstances can fairly be described as a cavalier approach to the truth of the statement.<sup>58</sup>

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<sup>53</sup> At [41].

<sup>54</sup> At [13].

<sup>55</sup> At [39].

<sup>56</sup> At [48]–[49].

<sup>57</sup> At [43].

<sup>58</sup> At [47].

[340] In *Lange (No 2)*, the Court of Appeal said the level of responsibility exists on a sliding scale that depends on the gravity of the allegations and the width of the publication.<sup>59</sup> The Court did not elaborate on what matters went to lack of responsibility. In England and Wales, the question of whether a journalist has acted responsibly is directed to determining whether the publication was made on a privileged occasion.<sup>60</sup> Nevertheless, the 10 considerations for determining whether a widely published defamatory statement was made responsibly suggested by Lord Nicholls in *Reynolds*<sup>61</sup> (the *Reynolds* factors) provided a helpful though non-exhaustive 10-point checklist for considering in the New Zealand context whether a privilege had been lost under s 19 of the Defamation Act.

[341] Mr Craig admitted in this case that, except in respect of Publication 11, the defendants' statements were made on occasions that were privileged on *Lange v Atkinson* principles. He argued, however, that the Court should determine that the defence of qualified privilege should fail because the defendants acted irresponsibly and, therefore, took improper advantage of the occasion of publication.

*The new defence of responsible communication on a matter of public interest*

[342] In *Durie v Gardiner*, the Court of Appeal held that there are two elements to establish the new public interest defence:<sup>62</sup>

- (a) first, that the subject matter of the publication was of public interest;  
and
- (b) second, that the communication was responsible.

[343] The Court of Appeal explained that the subject matter was “of public interest” when the subject matter invited public attention; was a matter where the public, or a segment of the public, had some substantial concern because it effects the welfare of

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<sup>59</sup> At [49].

<sup>60</sup> *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 (HL).

<sup>61</sup> At 205.

<sup>62</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [58].

citizens; or was a matter to which considerable public notoriety or controversy was attached.<sup>63</sup>

[344] In determining whether the publication was “responsible”, the Court of Appeal held that regard would be had to all relevant circumstances of the publication, including:<sup>64</sup>

- (a) The seriousness of the allegation – the more serious the allegation, the greater the degree of diligence to verify it.
- (b) The degree of public importance.
- (c) The urgency of the matter – whether the public’s need to know required the author to publish when that was done, taking into account that news is often a perishable commodity.
- (d) The reliability of any source.
- (e) Whether comment was sought from the claimant and accurately reported – this has been described as a core factor because it speaks to the essential sense of fairness the defence is intended to promote. In most cases it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond. Failure to do so also heightens the risk of inaccuracy. The target may well be able to offer relevant information beyond bare denial.
- (f) The tone of the publication.
- (g) The inclusion of defamatory statements which were not necessary to communicate on the matter of public interest.

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<sup>63</sup> At [65].

<sup>64</sup> At [67].

[345] In setting out these factors for consideration, the Court of Appeal had regard to the *Reynolds* factors.<sup>65</sup>

[346] The new defence is available where the defendant has made an untrue statement of fact which has damaged the reputation of the complainant. What would otherwise justify the granting of a remedy, including damages, is excused when the defence is applied because of what the Court of Appeal in *Durie v Gardiner* described as a shift in striking<sup>66</sup>

... a just balance between two cherished rights – the right to protection of reputation (intimately related to the protection of personal privacy) and the right to freedom of expression which includes the freedom to impart and receive information and ideas. Striking the balance is “a value judgment informed by local circumstances and guided by principle”.

(Footnotes omitted.)

[347] Since responsible communication on a matter of public interest is no longer a matter giving rise to a qualified privilege, the provisions of s 19 of the Defamation Act do not apply to the new defence. The Court of Appeal in *Durie v Gardiner* did not address expressly whether the new defence would fail if the defendant, carrying the burden of proof, was unable to establish that there had been no misuse of the occasion, either through being predominantly motivated by ill will or otherwise taking improper advantage of the occasion of publication. The Court held that recognising a new defence that is not confined to parliamentarians or political issues but extends to all matters of significant public concern, and making it available to all persons who would not have benefited from the *Lange v Atkinson* qualified privilege, is tempered by the imposition of the responsibility requirement. The Court said:<sup>67</sup>

The emergence of social media and the "citizen journalist" ... has radically changed the nature of public discourse. Bloggers and those who comment on blogs, tweeters, and users of Facebook and other social media are modern phenomena largely unknown to the Court in *Lange*. While the mainstream New Zealand media may still be as responsible as the Court in *Lange* considered it was, the proliferation of unregulated bloggers and other commentators who can be reckless means that the imposition of a responsibility requirement is highly desirable and a necessary safeguard for reputation and privacy rights. It would also

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<sup>65</sup> See, for example, [45]–[46], [56], [61] and [67].

<sup>66</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [53].

<sup>67</sup> At [56](c).



provide much needed clarity and certainty in an unregulated world. The other alternative would be to deny the defence altogether to anyone other than the mainstream media but we do not consider that drawing such a distinction would be justified either as a matter of logic, policy or principle. Non-media commentators have an important role to play.

[348] It does not necessarily follow, in my view, that a communication on a matter of public interest will be held to be irresponsible merely because the author is predominantly motivated by ill will towards the target. The rationale for the defence is to strike a just balance between the protection of reputation and the right to freedom of expression on matters of public interest. The focus of the inquiry about whether the defence applies, therefore, is not so much on the motivation of the author seeking its protection as on the public interest in receiving information responsibly communicated, weighed against the damage caused to the target's reputation by an untrue statement. The factors identified by the Court of Appeal in *Durie v Gardiner*,<sup>68</sup> drawing on the *Reynolds* factors, address the nature of the inquiry into the facts undertaken by the author and the circumstances of the publication, including the way in which the untrue and damaging statement is expressed. A person acting responsibly is likely to have undertaken an inquiry into the facts which is as comprehensive as the circumstances may reasonably require, including seeking and accurately reporting comment from the plaintiff. It is likely that the author will have presented a balanced account and adopted a measured tone. An author predominantly motivated by ill will towards the plaintiff is likely to have failed to take one or more of those steps. Whether the author has proved they were predominantly motivated other than by ill will, therefore, is a question likely to be subsumed by the inquiry into whether he or she acted responsibly.

[349] For this case, the essential effect of *Durie v Gardiner* is that whether the communication was responsible has moved from being a consideration in determining whether the privilege was lost to being a matter determining whether the defence applies. As the Court of Appeal observed, the same sorts of considerations which apply under the new public interest defence also applied under *Lange v Atkinson* in relation to politicians, albeit that those considerations often went to the loss of the

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<sup>68</sup> At [67].

privilege. Although the onus of proving responsibility shifts to the author, the outcomes are likely to be the same.<sup>69</sup>

*The new defence applies*

[350] Since the release of the Court of Appeal's judgment in *Durie v Gardiner*, I have had the benefit of further submissions from the parties addressing:

- (a) the extent, if any, to which the new public interest defence should apply to this proceeding; and
- (b) if the defence should not be available, whether the judgment in *Durie v Gardiner* informs the Court's decision in this case as pleaded and presented and, if so, how.

[351] The parties agreed that there was no obstacle to applying the new defence retrospectively in this case. Apart from Publication 11, which is addressed more fully below, Mr Craig accepted that the publications were directed towards him and raised questions about his character, including his fitness to lead the Conservative Party and to be a member of Parliament, and so were published on occasions of qualified privilege. In his further submissions on the application of the new defence to this case, Mr Craig accepted that the same reasoning applied. I accept that proposition. I accept also Mr Henry's argument that reporting Mr Stringer's allegations about Mr Craig's conduct and his criticisms of Mr Craig, both to other Conservative Party board members and to representatives of the news media, was a matter of legitimate public interest in the inner workings of a political party whose Party List candidates were seeking election to Parliament. Although Mr Henry acknowledged that it was open to Mr Craig to rely on the defence of public interest in meeting Mr Slater's counterclaim, Mr Craig informed the Court by supplementary memorandum that he did not wish to do so.

[352] Mr Craig's position is that the arguments he had raised in submitting that Mr Slater and SMCL should be held to have lost the benefit of the *Lange v Atkinson*

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<sup>69</sup> At [85].

privilege should be applied to the question of whether the defendants could rely on the new public interest defence. I accept the view of the parties that, albeit in a different context, the issue of whether Mr Slater and SMCL acted responsibly in making the allegedly defamatory statements was addressed adequately in the evidence and submissions.

[353] Given that the Court of Appeal held the *Lange v Atkinson* qualified privilege no longer applies and that the new public interest defence is to be applied retrospectively, I was satisfied that it is just that the pleadings should be amended to delete the defendants' reliance on *Lange v Atkinson* and that it be substituted by the new defence of communication on a matter of public interest. By a Minute (No 19) dated 29 August 2018, I directed that the defendants' third amended statement of defence (redrafted on 13 September 2017) be amended by deleting the content of the paragraphs pleading reliance upon the *Lange v Atkinson* privilege and, in each case, replacing them with the following:

The defendants rely on the defence of responsible communication on a matter of public interest.

[354] Under both *Lange* and *Durie*, the two central factors are the public interest and the responsibility requirement. The substantial effect of *Durie v Gardiner* is that it has broadened the availability of a defence based on public interest beyond statements made in the news media about parliamentarians or political issues. But as this case remains concerned with Mr Craig seeking election to Parliament, applying the new public interest defence has no material impact on the Court's findings on the central questions of the existence of a genuine public interest and whether the defendants acted responsibly in publishing the statements which are under scrutiny in the proceeding.

[355] I was satisfied that no party would be disadvantaged by not calling further evidence or making further submissions directed more specifically at the new defence. The parties did not ask for leave to take either step.

[356] In this case, the real contest in respect of the new defence is whether the defence should fail in respect of any publication because the author has not proved

that he or it acted responsibly in publishing the statements. That issue is addressed below in relation to each cause of action.

### **Reply to attack qualified privilege**

[357] A person whose character or conduct has been attacked by an untrue statement has a qualified privilege (known as the “defence to an attack” or “right to reply to an attack” privilege) against liability for defamation in making statements in reply, provided the statements are made in good faith and are relevant to the allegations made in the initial attack.<sup>70</sup> In this sense, the response can be either strictly defensive or by way of counter-attack, enabling the person to speak freely and answer to the same public audience which received the original attack. A certain freedom or latitude is appropriate to allow the degree of vindication which is fairly warranted by the occasion.<sup>71</sup> As Katz J said, in considering Mr Craig’s defence in a proceeding for defamation brought against him by Mr Williams, based on the *Dirty Politics and Hidden Agendas* booklet:<sup>72</sup>

The privilege has been recognised as a robust one. It may entitle “violent or excessively strong” language to be used... Similarly, the terms of the “reply are not measured in very nice scales”. They may be strictly a denial or may move to a “counter-attack” or “counterpunch”, including on the attacker’s character ... a person who is defamed has a recognised interest in being able to reply forcefully to those allegations made against him or her in order to “prevent the charges operating to his [or her] prejudice”.

[358] Section 19(1) of the Defamation Act 1992 provides that a defence of qualified privilege based on a reply to an attack will fail if the person defamed proves that, in publishing the matter that is the subject of the proceedings, the author was predominantly motivated by ill will towards the claimant or otherwise took improper advantage of the occasion of publication.<sup>73</sup> For the purposes of applying s 19(1) to this case, it is convenient to adapt Katz J’s direction to the jury in Mr Williams’s

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<sup>70</sup> Alastair Mullis and Richard Parkes (eds) *Gatley on Libel and Slander* (12th ed, Sweet & Maxwell, London, 2013) at [14.51], cited in *Williams v Craig* [2018] NZCA 31 at [82]. As to the requirement for relevance, see *Harbour Radio Pty Ltd v Trad* [2012] HCA 44, (2012) CLR 31 at [23]–[24].

<sup>71</sup> *Williams v Craig* [2018] NZCA 31 at [82], citing *Penton v Calwell* (1945) 70 CLR 219 at 233–234 per Dixon J; and *Alexander v Clegg* [2004] 3 NZLR 586 (CA) at [61]–[63].

<sup>72</sup> *Williams v Craig* [2017] NZHC 724 at [61], [2017] 3 NZLR 215 (footnotes omitted), approved in *Williams v Craig* [2018] NZCA 31 at [82].

<sup>73</sup> See also *Lange v Atkinson* [1998] 3 NZLR 424 (CA) at 471 per Tipping J.

proceeding against Mr Craig, which was approved by the Court of Appeal on appeal from the trial Judge's decision to order a retrial.<sup>74</sup> The considerations to be applied to Mr Craig's claim of qualified privilege in replying to the alleged attack by Mr Slater are these:

- (a) Mr Craig will not be protected by qualified privilege if he was predominantly motivated by ill-will towards Mr Slater when he responded to the attack. Ill-will essentially means that the main reason for Mr Craig's response was not because he wanted to set the record straight, or vindicate his own reputation, but because he wanted to hurt or injure Mr Slater.
- (b) In order for the privilege to be taken away, harming or injuring the reputation of the attacker must be the dominant motive. If Mr Craig's main motivation was simply to respond to the attack or to defend himself, that will not be ill will, even if he knew that his response would be likely to harm Mr Slater.
- (c) The Court needs to focus on what Mr Craig's motives were, not what the end result was.

[359] If the author goes beyond the scope of the initial attack, and lays fresh accusations unconnected with the original attack, it may be that they exceed the privilege.<sup>75</sup> The response must be relevant to the initial attack for an occasion of qualified privilege to arise. Katz J noted in *Williams v Craig* that there is a fairly high threshold for statements made in reply to be considered irrelevant,<sup>76</sup> citing the authorities that considered it must be "plain and obvious"<sup>77</sup> that they were "entirely irrelevant and extraneous material",<sup>78</sup> or "unrelated or insufficiently related to the

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<sup>74</sup> *Williams v Craig* [2018] NZCA 31 at [90].

<sup>75</sup> *News Media Ownership v Finlay* [1970] NZLR 1089 (CA).

<sup>76</sup> *Williams v Craig* [2016] NZHC 2496, [2016] NZAR 1569 at [17].

<sup>77</sup> *Hamilton v Clifford* [2004] EWHC 1542 (QB) at [74].

<sup>78</sup> *Watts v Times Newspapers Ltd* [1997] QB 650 (CA) at 671.

attack”.<sup>79</sup> Where the strength of an attack is tied in some way to the veracity or character of the person who made it, attacking those characteristics is relevant.<sup>80</sup>

[360] A key issue in this case is whether the reply was made to a wider audience than that to which the attack was made: the recipient of the reply must have an interest in receiving it,<sup>81</sup> and the law presumes that only the audience that heard the attack has sufficient interest in receiving the reply.<sup>82</sup> The particular type of news medium is relevant only to the reach and audience of the particular medium, because the author is “allowed to defend himself [or herself] in the same field in which the plaintiff has assailed [them].”<sup>83</sup> An original attack which reaches the public at large will entitle the reply to be directed to the public and will not be an abuse of the privileged occasion.<sup>84</sup>

[361] As a general principle across common law jurisdictions, the Courts recognise a hierarchy of speech value, at the pinnacle of which is political speech concerning democratic values.<sup>85</sup> There are observations in the judgments of the majority of the Court of Appeal in *Hosking v Runting*, made in the context of considering the reach of privacy laws in New Zealand, that have some resonance in this case. Gault and Blanchard JJ considered that the importance of the value of the freedom of expression in privacy cases will be related to the extent of legitimate public concern in the information publicised.<sup>86</sup> Tipping J said, in discussing limitations on the freedom of expression, that:<sup>87</sup>

... the nature of the information imparted may well have a bearing on the reasonableness and justifiability of the limitation in issue. This is a manifestation of proportionality. The more value to society the information imparted or the type of expression in question may possess, the heavier will be the task of showing that the limitation is reasonable and

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<sup>79</sup> *News Media Ownership v Finlay* [1970] NZLR 1089 at 1095.

<sup>80</sup> *Penton v Calwell* (1945) 70 CLR 219 (HCA) at 243 per Dixon J; *Adam v Ward* [1917] AC 309 (HL) at 321 per Earl Loreburn.

<sup>81</sup> *Lange v Atkinson* [1998] 3 NZLR 424 (CA) at 441, endorsing *Adam v Ward* [1917] AC 309 (HL), clarified in *Lange v Atkinson* [2000] 3 NZLR 385 (CA) at [20].

<sup>82</sup> *Watts v Times Newspapers* [1997] QB 650 (CA) at 662 per Hirst LJ.

<sup>83</sup> *Norton v Hoare (No 1)* (1913) 17 CLR 301 (HCA) at 318 per Barton ACJ.

<sup>84</sup> *Harbour Radio Pty Ltd v Trad* (2012) 247 CLR 31 (HCA) at [129]; *Penton v Calwell* (1945) 70 CLR 219 (HCA) at 243 per Latham CJ and Williams J; and *Loveday v Sun Newspapers Ltd* (1938) 59 CLR 503 (HCA) at 515 per Starke J.

<sup>85</sup> *Campbell v MGN Ltd* [2004] UKHL 22, [2004] 2 AC 457 (HL) at [148] per Baroness Hale. See also *Hosking v Runting* [2005] 1 NZLR 1 (CA); *Brooker v Police* [2007] NZSC 30, [2007] 3 NZLR 91 at [243]–[247] per Thomas J; and *Morse v Police* [2011] NZSC 45, [2012] 2 NZLR 1 at [14] per Elias CJ.

<sup>86</sup> At [132].

<sup>87</sup> At [235].

justified. ...There may well be a greater potential for legitimate public concern about information imparted as part of the marketplace of ideas or in support of the democratic process than there is with information, the imparting of which is supported only by the abstract theory of liberty.

[362] It is relevant, therefore, that Mr Slater's publications and Mr Craig's reply were aimed at the nature or conduct of politics, particularly Mr Craig's suitability to be the Conservative Party leader and a Member of Parliament, and Mr Stringer's criticisms of him from within the Party.

*Mr Slater's application to file a late s 41 notice concerning reply to attack qualified privilege*

[363] Section 41 of the Defamation Act requires that where there is a defence of qualified privilege, and the claimant, in response, intends to allege that the author was predominately motivated by ill will or took improper advantage,<sup>88</sup> notice of the allegation must be served by the claimant on the author within 10 working days after the author's statement of defence is served on the claimant.<sup>89</sup> The notice must include particulars specifying the facts and circumstances which the claimant says support the allegation of ill will or improper advantage.<sup>90</sup>

[364] Section 41 applies to Mr Craig's defence of qualified privilege to Mr Slater's counterclaim, but Mr Slater did not file a s 41 notice within the time required. The point was taken by Mr Craig in his closing submissions. He argued that Mr Slater's default precluded his challenge to Mr Craig's reliance on the qualified privilege of reply to attack on the basis of ill will or improper advantage. An application was then made on behalf of Mr Slater, seeking leave under s 41(3) to file a notice out of time. The particulars which Mr Slater wished to assert in the proposed notice are:

- (a) Mr Craig's statements in media and in the booklet were seriously defamatory of Mr Slater and published to every household in the country.

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<sup>88</sup> The defence provided by s 19 of the Defamation Act 1992.

<sup>89</sup> Defamation Act 1992, ss 41(1) and (3).

<sup>90</sup> Section 41(2).

- (b) Mr Craig knew that the defamatory allegations in the statements were false, or acted with reckless disregard as to their truth or falsity.
- (c) Mr Craig deliberately published the statements and had continued to assert in media and his booklet that they were true in order to do as much harm as possible to the reputation of Mr. Slater.
- (d) Mr Craig did not have anyone to interview, and needed to invent a pretence of interviewing "Mr X" to give his pamphlet credibility. Mr Craig knew that the allegations of dishonesty and acting in concert were not true. This was a deliberate and calculated deception on the part of Mr Craig.
- (e) Mr Craig, in being Mr 'X' and the fictitious interviewer, deliberately and maliciously fabricated the impression of a 'whistle-blower' when, in fact, the entire charade was fabricated by Mr. Craig.
- (f) Mr Craig had made statements and 'bets' with third parties about how he would succeed in destroying Mr Slater.

[365] I received further submissions from the parties on the leave application. The parties agree that the principles for whether leave should be granted are found in *Peters v Television New Zealand*; namely, whether:<sup>91</sup>

- (a) the delay in filing was inordinate;
- (b) the delay is excusable;
- (c) the person claiming privilege will be prejudiced by the granting of leave; and
- (d) a miscarriage of justice will be caused to the party seeking to challenge the privilege if leave is refused.

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<sup>91</sup> *Peters v Television New Zealand* HC Auckland CIV-2004-404-3311, 1 October 2009 at [18].



[366] Mr Henry said Mr Slater had prepared both a notice under s 39 of the Act<sup>92</sup> and a notice under s 41 but had inadvertently filed only the s 39 notice. The absence of a s 41 notice, according to counsel, was not appreciated by Mr Slater until the point was taken by Mr Craig in his closing submissions. Mr Henry argued (somewhat conflating two elements of the test) that the delay was not inordinate because there is no prejudice to Mr Craig in permitting a late opportunity to attend to the formality. He also submitted that, because Mr Slater had served a notice under s 39, Mr Craig had been sufficiently alerted to the challenge to Mr Craig's motivation in publishing the booklet.

[367] Mr Craig submitted that Mr Slater had ample warning of the need to file a leave application before trial, given that Mr Craig filed a first notice, an updated notice, and an amended notice under the same section in respect of Mr Slater's reliance on the *Lange v Atkinson* privilege. While Mr Craig acknowledged that Mr Slater was self-represented for a time, he submitted that an application for leave under s 41(3) could have been made at any time after Mr Henry was engaged as counsel. Mr Craig argued that he ran his case on the basis that Mr Slater was not alleging that he was predominately motivated by ill will or took improper advantage in publishing the booklet. Since the leave application was not filed until after he had closed his case and made his closing submissions, Mr Craig submitted that he did not have the opportunity to call witnesses whom he consulted to give evidence on the steps he took regarding publication of the booklet and to give other evidence supporting the inferences he would wish the Court to draw about his motives in publishing. He said he would suffer prejudice as a result.

[368] The purpose of the requirement to give notice of the particulars of an allegation of ill will relied upon in rebuttal of a defence of qualified privilege, within a short period after the service of the defence, is four-fold:

- (a) To allow the defendant an opportunity to reconsider the strength of his or her case, and to decide whether the defendant ought to take one of

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<sup>92</sup> Which requires a claimant to give notice to an author of any allegation that, where the author relies on a defence of honest opinion, the opinion was not the genuine opinion of the author and to specify any particular facts and circumstances relied upon in support of that allegation.

the steps described in s 29(a) and (b) of the Defamation Act that the Court is required to take into account in mitigation of damages.<sup>93</sup>

- (b) To identify the issues in the proceeding at an early stage.
- (c) To inform decisions by the parties and the Court on interlocutory issues, including discovery.
- (d) To assist the parties in their preparation for trial.

[369] The only one of those purposes that will have been met if leave is granted is the purpose of identifying the issues in the proceeding, but plainly that would not be at an early stage. On a practical view, the effect of allowing Mr Slater's application to serve the proposed notice out of time would be to excuse him from the obligation altogether.

[370] In *Gillespie v McKay*, a delay of over 15 months in filing a notice under s 41 was held to be inordinate and inexcusable.<sup>94</sup> Wild J held that no miscarriage of justice would result from a refusal of leave in circumstances where the plaintiff, in default, was fixed with the consequences of his own delay, rather than inflicting adverse consequences upon the other party which was not responsible for them. In *Alexander v Clegg*,<sup>95</sup> Salmon J adopted the approach taken in *Gillespie v McKay* and, earlier, by Master Faire in *Mahuta v ATN Limited*,<sup>96</sup> in holding that the possibility of prejudice to an author, because of the failure of a claimant to give timely notice of particulars, was held to be the overriding factor. In both *Gillespie v McKay* and *Alexander v Clegg*, the Court's decision was influenced by the considerable prejudice the defendant would have suffered if the plaintiff had been permitted to rebut the defence on the grounds of ill will without having given timely notice of his intention to do so.

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<sup>93</sup> Section 29 provides, so far as is relevant, that in assessing damages in any proceedings for defamation, the Court shall take into account in mitigation of damages, the nature, extent, form, manner, and time of the publication of any correction, retraction, apology, explanation or rebuttal by the defendant.

<sup>94</sup> *Gillespie v McKay* (1999) 13 PRNZ 90.

<sup>95</sup> *Alexander v Clegg* HC Auckland CP 285-SD/99, 12 July 2002.

<sup>96</sup> *Mahuta v ATN Limited* (1998) 11 PRNZ 321.

[371] The essence of the analysis undertaken in those cases is a balancing exercise between the prejudice that would be suffered by the party in default if not permitted to advance the defence and any prejudice that would occur to the party not in default, with the scales tilted against the party who has caused the consequences. But that does not mean that the party in default will always fail to obtain leave if there has been any degree of prejudice to the other party.

[372] In *Elders Pastoral Limited v Marr*,<sup>97</sup> the Court of Appeal upheld a decision to permit amendments to a statement of claim during closing submissions. The Court noted, first, that a decision on whether to grant leave to make an amendment to the claim at a very late stage<sup>98</sup> was a matter for the exercise of judicial discretion. Second, the Court rejected a disciplinary approach, "to penalise dilatoriness and to discourage opportunism", in favour of considering what the Court described as "the three formidable hurdles" of showing that the amendment was in the interests of justice, would not significantly prejudice the other parties, and would not cause significant delay. The Court of Appeal endorsed the approach taken by the trial Judge, whom it considered to be best placed to undertake the balancing exercise between the competing interests of the parties, in allowing the amendments to clarify the issues in dispute and determine the real controversy between the parties. The Court of Appeal agreed that the applications for amendment did not involve the raising of a distinct defence for the first time.<sup>99</sup>

[373] This Court might have been assisted by an affidavit from Mr Slater explaining the circumstances of his failure to file the s 41 notice, but Mr Craig's argument against a grant of leave was based on an apparent acceptance of Mr Henry's explanation from the Bar, no doubt based on instructions, and I am prepared to do the same. There is no doubt the delay in this case was inordinate and it might have been thought that careful attention to the state of the pleadings, in preparation for trial, would have exposed Mr Slater's oversight. But, even if the delay can be excused, the explanation does not dispose of the central issue of prejudice that might have arisen if Mr Craig had been misled as to the issues at trial for which he was required to prepare. Mr Craig

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<sup>97</sup> *Elders Pastoral Limited v Marr* (1987) 2 PRNZ 383 (CA).

<sup>98</sup> The evidence at the trial covered 57 sitting days and the application for amendments came after more than a week of final submissions.

<sup>99</sup> At 385.

argues that the absence of the notice from the pleadings meant that he did not address what he says are new matters that could have been addressed in his evidence and the evidence of additional witnesses.

[374] In his opening submissions, Mr Henry questioned whether Mr Craig's counter-attack in the booklet was an occasion of privilege in terms of the test set out by the Court of Appeal in *Lange (No 2)*.<sup>100</sup> He also argued that Mr Craig abused the privilege (if it was available to him) by singling out a relatively small news media outlet for attention when all of the matters raised by Mr Slater and Whaleoil in the various blog posts and interviews were widely covered by other news media organisations having national coverage, such as Newstalk ZB and Stuff. Mr Henry emphasised that where the whole of the nation's national news media was exposing a legitimate political scandal of Mr Craig's making, the singling out of one small component of the news media to be attacked and claiming qualified privilege was wrong in principle because it would be providing a mandate to the wealthy to bully small media outlets. Mr Henry submitted that Mr Craig's ill will towards Mr Slater was demonstrated by his continuing denial that he had been guilty of sexual harassment, despite having admitted being guilty of inappropriate conduct, in the face of evidence that Mr Slater had access to the letters Mr Craig had written to Ms MacGregor. Mr Henry submitted that Mr Craig's lack of a genuine belief in the truth of his allegations was evidence of his malicious motivation, referring to the well-known discussion of malice by Lord Diplock in *Horrocks v Lowe*.<sup>101</sup>

The motive with which a person published defamatory matter can only be inferred from what he did or said or knew. If it be proved that he did not believe what he published was true this is generally conclusive evidence of express malice, for no sense of duty or desire to protect his own legitimate interests can justify a man in telling deliberate and injurious falsehoods about another, save in the exception case where a person may be under a duty to pass on, without endorsing, defamatory reports made by some other person.

[375] I am not persuaded that Mr Henry's opening (which, of course, followed the close of Mr Craig's case) should reasonably have alerted Mr Craig to the particulars of the proposed s 41 notice, but it did at least provide a warning, at that stage of the

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<sup>100</sup> *Lange v Atkinson* [2000] 3 NZLR 385 (CA) at [1] and [41].

<sup>101</sup> *Horrocks v Lowe* [1975] AC 135 at 149-150.

trial, that Mr Slater was asserting that Mr Craig did not genuinely believe that what he said in the booklet was true. There is also some force in Mr Henry's argument that Mr Slater's s 39 notice (alleging the particulars of Mr Slater's assertion that Mr Craig's honest opinion defence should fail because the opinions expressed were not genuine) raised matters suggesting that Mr Craig was motivated by vindictiveness in publishing the booklet. The s 39 notice pleaded that Mr Craig, in relying on the defence that the statements which Mr Slater alleged were defamatory were expressions of honest opinion:

- (a) had denied that the statements carried any of the meanings alleged by Mr Slater;
- (b) either knew that the facts upon which his opinion was purportedly based were untrue or acted with reckless disregard as to the truth, falsity or accuracy of those facts;
- (c) did not have anyone to interview, and needed to invent a pretence of interviewing "Mr X" to give his booklet credibility; and
- (d) knew that the allegations against Mr Slater of dishonesty and acting in concert were not true.

[376] The assertion that Mr Craig had made allegations that were deliberately untrue, or that he was reckless about their truth, suggests an ulterior motive of revenge unrelated to a genuine intention to put the record straight. I am satisfied that, both prior to trial and as a result of Mr Henry's cross-examination, Mr Craig was given a fair opportunity, which he took, to identify the issues in the proceeding and to:

- (a) explain his motivation for publishing the booklet so widely;
- (b) give and refer to evidence that he argued proved not only the falsity of the defamatory statements published by Mr Slater and SMCL, but also the failure of the defendants to act responsibly in publishing the statements;

- (c) explain why he believed in the truth of the allegation that Mr Slater, Mr Williams and Mr Stringer had conspired to remove him from the leadership of the Conservative Party; and
- (d) explain why he used what he called the “literary device” of concocting an interview with “Mr X”.

[377] Given the way in which these matters were dealt with in the evidence and in the parties’ closing submissions, I am satisfied that Mr Craig would not be prejudiced in his reliance on the reply to an attack privilege by permitting Mr Slater to rely on the s 41 notice. Whether Mr Craig was motivated by ill will or took improper advantage of the privileged occasion is to be determined by reference to his evidence explaining why Mrs Craig and he published the booklet and the inferences to be drawn from the nature of the reply; the content of the booklet and the manner of its publication and distribution. It would not assist that determination to know what he did, or what advice he received, in consulting others about the booklet.

[378] Conversely, Mr Slater advanced the particular propositions set out in the proposed notice in evidence, except for the allegation in paragraph 2.6 that Mr Craig had made statements and bets with third parties about how he would succeed in destroying Mr Slater. The prejudice to Mr Slater of not being able to challenge Mr Craig's claim to privilege on the grounds relied upon, with that one exception, is not outweighed by any prejudice asserted by Mr Craig. The factors which fall to be considered in determining whether the privilege was lost were well ventilated in the evidence and in the submissions of the parties.

[379] In the unusual circumstances of this case, I grant retrospective leave to Mr Slater to rely on the notice under s 41 of the Defamation Act filed during the hearing on 1 June 2017, except for paragraph 2.6.

## **DETERMINATION OF THE CLAIMS AND DEFENCES RELATED TO EACH PUBLICATION**

### **The issues to be determined in respect of each alleged publication**

[380] It follows from the principles just summarised that, in respect of each publication which is alleged to have defamed Mr Craig or Mr Slater, as the case may be, it is necessary to determine whether the claimant has proved that each publication:

- (a) was published by the party alleged to have made it;
- (b) carried the meanings alleged; and
- (c) was or were defamatory.

For most causes of action in both Mr Craig's claim and Mr Slater's counterclaim, it is then necessary to determine:

- (d) whether, taking the publication as a whole, the publication concerned a statement of fact or an expression of opinion;
- (e) (honest opinion) if an expression of opinion, whether the author of the statement has proved –
  - (i) the existence of true facts upon which the opinion is based;
  - (ii) that the facts relied upon as the basis for the opinion were stated in the publication or generally known;
  - (iii) that, taking the publication as a whole, the facts relied upon were true or not materially different from the truth; and
  - (iv) that the opinion was genuinely held;

- (f) (truth) if a statement of fact, whether (taking the publication as a whole) the author has proved it was true or not materially different from the truth;
- (g) (for Mr Slater and SMCL only – responsible communication on a matter of public interest) if an untrue statement of fact, the author has proved that –
  - (i) the subject-matter of the publication was a matter of public interest; and
  - (ii) the communication was responsible;
- (h) (for Mr Craig only – reply to attack privilege) if Mr Craig published an untrue statement of fact in replying to an untrue defamatory publication by Mr Slater –
  - (i) whether Mr Craig has proved that his publication was in reply to Mr Slater’s publication. In that regard, the Court will be required to consider among other things whether the scope of Mr Craig’s publication was so excessive as to lead to the conclusion that the reply was not relevant to the originating publication; and
  - (ii) whether Mr Craig was predominantly motivated by ill will towards Mr Slater, or otherwise took improper advantage of the occasion of publication.

[381] Each of Mr Craig’s claims is set out as a separate cause of action founded on one of the alleged publications. Although there are a number of overlapping pleadings about the imputations said to be contained in the several publications by the defendants, it is necessary to consider the issues which arise for determination in respect of each publication separately, in the light of the circumstances at the time of publication. The same principles apply to Mr Slater’s claims against Mr Craig.



**First cause of action (against Mr Slater only) – Publication 1 – Newstalk ZB – 19 June 2015, 5.30pm**

[382] The first cause of action is founded on the publication of statements made by Mr Slater during a radio interview broadcast on *Newstalk ZB* at around 5.30 pm on 19 June 2015.<sup>102</sup> I repeat the transcript of the interview:

Larry Williams: Colin Craig's resignation today comes on the back of constant speculation about his behaviour regarding his press secretary who resigned just two days before the election last year. It's now being claimed the Conservative Party leader admitted to the inappropriate behaviour and settlement. Copies of the correspondence from Mr Craig to the staff member have been given to Whaleoil blogger, Cameron Slater, and Cameron Slater is with me ... And I should say at this point we have cross referenced this, we also know of another source who has exactly the same documentation.

What do you know of the allegations, Cameron?

Cameron Slater: ***Look the allegations are true, I wouldn't have run these if they weren't.*** Colin Craig is a highly litigious person and likes to threaten lawyers or utilise lawyers against people to try and hush them up but ***the documentary proof is irrefutable and these allegations are not actually allegations they're actually what's happened. Where he has settled with a former staff member a large sum of money, I'm told it runs into 6 figures.*** And there is 4 allegations of sexual harassment and the complaint was actually laid with the human rights commission. I've got copies of correspondence between Colin Craig and his former staff member. Some are in his own handwriting. Many are signed. So they were printed out and an ink signature is put on the bottom of those. ***And I also have copies of SEXT messages, you know dirty text messages that had been sent as well.*** So it's quite untoward behaviour from someone who portrayed himself as the anti-politician as someone who had higher ethical standards and was more honest than anyone else. It just turns out that Colin Craig is a ratbag politician like the rest of them.

Larry Williams: What do you know about this settlement, I take it was a confidentiality agreement?

Cameron Slater: Well I don't know the exact number and a number of other people who are my sources can't disclose the

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<sup>102</sup> Described above at [268].

exact number *but everybody says it's 6 figures. Now you don't do 6 figure sums for settlement of employment matters which is what Colin Craig told the Board, and he also told the Board a substantially lower amount of money as well. ...*

Larry Williams: Do you believe a board member has seen this document that you have?

Cameron Slater: I believe most of the board members have now seen it.

Larry Williams: *Texts, emails, letters?*

Cameron Slater: *Yes.*

Larry Williams: *And the nature of them again is what? Is it sexual harassment?*

Cameron Slater: It's sexual harassment. Let's be clear on this. There's no actual sexual relationship that has occurred, *the staff member concerned rebuffed the approaches but it was, the harassment was of a sexual nature.* This is not a couple of ponytail pulls that has been much of in the media. This is far more serious than that and it's been committed to writing as well *so there's plenty of evidence.*

Larry Williams: And Mr Craig has denied multiple times that there was ever been any inappropriate behaviour.

Cameron Slater: Well he has, he even did it today at the press conference. Which was quite bizarre it's one of the weirdest press conferences I've ever been to. But yes he essentially said that there's been all sorts of rumours and innuendo and quite bizarre stuff. *But the documents and the evidence is clear. There is no way that he can deny it.* And if he thinks he's going to put his name forward in the new leadership ballot or whatever they're going to do to solve this problem, that was the suggestion made that he was resigning temporarily until they had this review and then they'll see where it went. If he thinks he's going to put his name forward for that, then I've got a warning for Colin Craig it's ah, don't, because there's plenty more to come.

Larry Williams: Thank you that is Cameron Slater, Whaleoil blogger....

[Emphasis added to identify the statements relied upon by Mr Craig in his pleading.]

[383] It is not disputed that Mr Slater published the statements.

**Do the statements bear the pleaded meanings?**

[384] The next issue to be determined is whether the statements relied upon, read in context, by their natural and ordinary meanings convey to the ordinary person the imputations or meanings alleged in the pleadings. Mr Craig pleads that the ordinary and natural meaning of the words used would convey to listeners that he had:

- (a) sexually harassed Ms MacGregor;
- (b) sent her numerous "dirty" sexually explicit text messages which were unsolicited and a form of sexual harassment;
- (c) sexually harassed Ms MacGregor so seriously that he settled her sexual harassment claim by paying her a large sum of money running into six figures; and
- (d) lied to the board of the Conservative Party by claiming that he had paid Ms MacGregor substantially less than six figures to settle her employment claims when in fact he paid her a six-figure sum to settle her sexual harassment claim.

[385] In their formal pleadings, the defendants deny the imputations or meanings pleaded by Mr Craig in respect of all causes of action, but Mr Henry did not address any argument directed to the point in closing the defendants' case.

[386] I am satisfied that the statements relied upon by Mr Craig carried the pleaded imputations based on the express wording of the statements regarding sexual harassment, sexually explicit text messages and the statement that Mr Craig had lied to the Conservative Party board by claiming he had paid Ms MacGregor substantially less than a six-figure sum to settle her employment claims. Mr Slater did not say expressly that the sexual harassment was of a serious nature but his statement contained the following reasoning:

- (a) The settlement sum paid ran to six-figures.

- (b) Six-figure payments are not made to settle employment disputes.
- (c) There was a sexual harassment claim. Therefore,
- (d) A six-figure sum was paid to settle a sexual harassment claim. And so,  
(by inference)
- (e) The sexual harassment must have been serious.

[387] I am satisfied that a reasonable reader would infer, from the statement that the sexual harassment claim had been settled by a payment of a large sum running into six figures, that the alleged harassment was of a serious kind. The sting of the statement, however, (taking the publication as a whole) was that Mr Craig had been guilty of sexual harassment; that he had paid Ms MacGregor a sum of money to settle her claim for compensation; and that he had lied to the Conservative Party board about it.

**Were the pleaded meanings defamatory?**

[388] Mr Craig alleges that Publication 1 caused him reputational damage as a political leader seeking political office. He pleads that he was exposed to public hatred, ridicule and contempt; was brought into public disrepute and discredited generally, and is likely to continue to suffer loss and damage to his reputation.

[389] The defendants have not argued that, if the alleged meanings are proved, the statements were not defamatory of Mr Craig. There cannot be any doubt that they were. Mr Craig was a prominent businessman and leader of a political party with serious parliamentary aspirations. The Party's 2011 and 2014 electoral campaigns were founded, in part, upon policies said to be consistent with Christian and family values. Allegations that Mr Craig was guilty of the serious sexual harassment of an employee; that he sent her unsolicited, sexually explicit text messages; that he paid a large sum of money to settle a sexual harassment claim brought against him, and that he then lied to the Conservative Party board about those matters, would inevitably damage Mr Craig's reputation and meet the test of defamation by whichever formula was adopted.

### **Were the pleaded passages statements of fact or expressions of opinion?**

[390] I accept that Mr Slater commented by making observations about facts alleged in Publication 1, but looking at the publication as a whole, I conclude that the pleaded imputations were statements of fact. Mr Slater's first statement about the allegations against Mr Craig was that they were "true" and that "the documentary proof [was] irrefutable". He emphasised the point by saying that the allegations were "actually what's happened." In relation to the sexually explicit text messages, Mr Slater said that they were "dirty text messages that had been sent". Towards the end of the interview he emphasised that there was plenty of evidence; that the evidence was clear and that there was no way Mr Craig could deny it. Such observations confirm that Mr Slater was intending to convey facts to his audience, not what he thought about them. The statements upon which Mr Craig relies in alleging that parts of Publication 1 were defamatory of him may be contrasted with the opinions that Mr Craig was "a highly litigious person" and that he "is a ratbag politician like the rest of them".

[391] Because I have reached the firm conclusion that the impugned statements in Publication 1 were statements of fact, the defence of honest opinion falls at the first hurdle. It is necessary to consider next whether Mr Slater has a defence because he has proved that the statements were true or not materially different from the truth.

### **What is the meaning of "sexual harassment" in the context of this case?**

[392] Because it is central to the case and relevant to the other pleaded defamatory statements, I address first the statement that Mr Craig had sexually harassed Ms MacGregor or was guilty of "harassment of a sexual nature".

[393] While this judgment was being prepared, I indicated to the parties my view that their submissions on legal matters had not addressed directly the meaning of the term "sexual harassment" or of the phrase "sexually harass" where the concept of sexual harassment arises out of the publications forming the basis for Mr Craig's claim and the defences advanced by Mr Slater and SMCL. There appeared to have been an

assumption that the statutory ingredients of sexual harassment set out in the Human Rights Act apply.<sup>103</sup> I have had the assistance of additional submissions on the issue.

[394] The Court is required to adopt the natural and ordinary meanings of the expressions "sexual harassment" and "harassment of a sexual nature". Although "harassment" per se is defined in terms of repeated acts or pestering,<sup>104</sup> sexual harassment is not confined, in ordinary usage, to repeated acts. "Sexual harassment" is defined variously as "harassment, esp. of a woman, in a workplace etc. involving the making of unwanted sexual advances, obscene remarks, etc"<sup>105</sup> and "harassment (typically of a woman by a man) in a workplace or other professional or social situation, involving the making of unwanted sexual advances, obscene remarks, etc."<sup>106</sup> The distress or discomfort that is the likely consequence of other forms of harassment involving pestering or repetition will commonly be experienced by the victim of a single incident of sexual harassment in a workplace, professional or social setting. It would be illogical and inconsistent with contemporary usage to hold, for example, that a request for sexual favours in return for a job promotion or a role in a film would not ordinarily be regarded as sexual harassment unless it was repeated. Even an isolated incident of sexual harassment in a workplace or professional setting, depending on its severity, could have long-term implications for a continuing work relationship.

[395] Section 62 of the Human Rights Act, so far as is relevant, provides that:

**62 Sexual harassment**

...

(2) It shall be unlawful for any person ... by the use of language (whether written or spoken) of a sexual nature ... or by physical behaviour of a sexual nature, to subject any other person to behaviour that ... [is] unwelcome or

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<sup>103</sup> Human Rights Act 1993, ss 62(1), (2) and (3)(b). See also Employment Relations Act 2000, s 108(1).

<sup>104</sup> See *The Shorter English Oxford Dictionary* (6th ed, Oxford University Press, New York, 2007) at 1204: "to trouble or vex by repeated attacks" or to "subject to constant molesting or persecution"; and the *Collins English Dictionary* (online ed, 2018) "to trouble, torment, or confuse by continual persistent attacks, questions, etc."

<sup>105</sup> Tony Deverson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, South Melbourne, VIC. 2005) at 1033.

<sup>106</sup> *Oxford English Dictionary* (online ed, Oxford University Press, 2018).

offensive to that person (whether or not that is conveyed to the first-mentioned person); and ... [is] either repeated, or of such a significant nature, that it has a detrimental effect on that person [in respect of employment, a partnership, membership of a union or professional or trade association and other areas described in s 62(3) of the Act] ....

[396] The statutory meaning was invoked by Ms MacGregor's sexual harassment claim to the Human Rights Commission. Since Ms MacGregor was an employee of Centurion for at least part of the period during which she claims to have been sexually harassed, it would have been open to Ms MacGregor to initiate personal grievance proceedings under the Employment Relations Act 2000. "Sexual harassment" is defined in that Act in these terms, so far as is relevant:<sup>107</sup>

### **108 Sexual harassment**

(1) ... an employee is sexually harassed in that employee's employment if that employee's employer or a representative of that employer ...

(b) by—

- (i) the use of language (whether written or spoken) of a sexual nature; or
- (ii) the use of visual material of a sexual nature; or
- (iii) physical behaviour of a sexual nature,—

directly or indirectly subjects the employee to behaviour that is unwelcome or offensive to that employee (whether or not that is conveyed to the employer or representative) and that, either by its nature or through repetition, has a detrimental effect on that employee's employment, job performance, or job satisfaction.

[397] "Sex" is an ambiguous noun: it may mean sexual intercourse or other intimate physical contact or gender. The adjective "sexual" is not defined in either enactment. Depending on the context, the word may refer to behaviour "relating to, tending towards, or involving sexual intercourse, or other forms of intimate physical contact", or behaviour "relating to, or arising from gender, orientation with regard to sex, or the social and cultural relations between the sexes."<sup>108</sup> It seems clear that the former

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<sup>107</sup> There are provisions in s 108(1)(a) of the Employment Relations Act 2000 dealing expressly with requests for sexual favours.

<sup>108</sup> Oxford English Dictionary (online ed, Oxford University Press, 2018). See also *The Shorter English Oxford Dictionary* (6<sup>th</sup> ed, Oxford University Press, New York, 2007) at 2778: "pertaining

meaning is intended in the anti-harassment provisions of both statutes. Since they make separate provision for discrimination on the ground of “sex”, in which the context compels the conclusion that the word connotes gender, it is unnecessary to interpret “sexual harassment” in the New Zealand statutory context as incorporating a hybrid meaning.<sup>109</sup> A question to be determined in the proceeding, however, is whether a plea of truth in defence of a defamation claim based on a statement that Mr Craig “sexually harassed” Ms MacGregor imports the statutory meanings.

[398] I am satisfied that, on every occasion on which there was a reference to sexual harassment in the publications with which this case is concerned, the intended meaning and the meaning that would have been understood by any reader was that the allegation amounted to conduct or language related to intimate physical contact.

[399] The statutory definitions of sexual harassment include three common and essential elements: first, conduct, words or behaviour of a sexual nature; second, the behaviour is of an unwanted or unwelcome nature; and third, the behaviour has a detrimental effect on the recipient in a prescribed manner. Sexual harassment by both words and conduct forms part of the ordinary meaning of the term and the inclusion in the statutory definitions of an isolated incident of behaviour reflects ordinary usage.

[400] A crucial element of sexual harassment is that the behaviour complained of must be unwelcome or unwanted by the person subjected to it. The New Zealand statutes use the words “unwelcome or offensive”; the dictionary definitions refer to “unwanted” advances or remarks as elements of the ordinary meaning. Whether the behaviour complained of may properly be characterised as unwanted, unwelcome, or

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to or arising from the possession of a particular sex; relating to the sexes or to social relations between them” or “pertaining to or involving physical intercourse, as in reproduction; deriving from or relating to desire for sex or for carnal pleasure” and Tony Deveson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, South Melbourne, VIC, 2005) at 1033: “of or relating to sex, or to the sexes or the relations between them.”

<sup>109</sup> The distinction in the New Zealand legislation between provisions addressing sexual harassment and those dealing with sex discrimination may be contrasted with position in the United States. There, not without difficulty, the term “sexual harassment” is applied variously in legislative provisions, court cases and academic writing to both harassment of a kind pertaining to sexual or intimate physical contact and harassment of a person amounting to gender discrimination. See the discussion in the US Supreme Court decisions in *Meritor Sav. Bank v. Vinson*, 477 U.S. 57, 68 (1986) and *Oncale v Sundowner Offshore Servs., Inc.*, 523 U.S. 75, 80 (1998). And see, generally on this issue, Ramit Mizrahi “Sexual Harassment Law After #MeToo: Looking to California as a Model” (2018) 128 Yale L.J. Forum 121 and Vicki Schultz “Reconceptualizing Sexual Harassment, Again” (2018) 128 Yale L.J. Forum 22.



offensive to the person to whom it is directed is a question of subjective fact to be determined having regard to the circumstances. The absence of any protest or objection at the time of the sexual harassment does not change the nature and quality of the act,<sup>110</sup> though it will be relevant to determining whether it was unwelcome or unwanted. The inevitable disadvantage that a complainant who has not protested will experience in terms of proving that the harassment occurred is addressed below.

[401] An issue to be resolved is whether, to prove the truth of a statement that Ms MacGregor was sexually harassed, the defendants must prove not only that she experienced the sexually oriented language or conduct that was unwanted or unwelcome but also that, as a result, she suffered detriment or harm. Proof of the statutory requirement that the language used or the behaviour had a detrimental effect on the victim in certain defined respects, such as in the areas prescribed in the Human Rights Act<sup>111</sup> or the Employment Relations Act,<sup>112</sup> is a qualifying element for the application of the statutory procedures. When the statutory procedures are invoked, the claimant is seeking a remedy.<sup>113</sup> It is necessary, therefore, to prove detriment as the basis for determining the amount of monetary compensation or other remedy that is appropriate in the circumstances.<sup>114</sup> Detriment, however, does not appear as a separate element in any of the dictionary definitions. In a workplace, professional or social setting, detriment, disadvantage or harm to a person subjected to an intentional sexually oriented act or remark is inherent in the unwelcome, unwanted or offensive nature of the language or behaviour employed. At the very least, there will be detriment for the complainant in having to work in the strained, tense or demeaning atmosphere inevitably created by unwelcome sexual conduct or language.

[402] Accidental or inadvertent conduct, even though it may have a sexual connotation, would not amount to harassment in ordinary usage or in a statutory

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<sup>110</sup> The definition in s 108(1) of the Employment Relations Act makes this clear. For a similar conclusion under the Human Rights Act 1996, see *Read v Mitchell* [2000] 1 NZLR 470 (HC) at 480, [2000] NZAR 80, 93. See also the Human Rights Commission's publication: New Zealand Human Rights "Dealing with Sexual Harassment" (2018).

<sup>111</sup> Human Rights Act 1993, ss 62(2) and (3).

<sup>112</sup> Employment Relations Act 2000, s 108(1)(b).

<sup>113</sup> See s 123 of the Employment Relations Act 2002 and s 92I of the Human Rights Act 1993.

<sup>114</sup> Mary Foley and Cassandra Kenworthy (ed) *Personal Grievances (NZ)* (loose-leaf ed, Thomson Reuters) at [8.1.30]. See also *Williams v Pacific Plastic Recyclers Ltd* (HRRT, Decision No 47/04, HRRT 58/02, 15 September 2004).

context. But proof of sexual harassment does not require proof that the perpetrator knew or intended that it would be unwanted or unwelcome and, in a statutory setting, that it would cause or be likely to cause detriment. That is because, once intentional conduct or language of a sexual nature occurs, the remaining element or elements are concerned with the response of the person subjected to it and, in the statutory context, the consequences for that person, not with the state of mind of the perpetrator. That is also the reason why sexual harassment may be established despite the complainant not having objected or complained about it at the time.

[403] Workplaces provide fertile soil for the growth of intimate, romantic and sexual relationships between colleagues. Of course, many of them do not end badly. But where a party to a work relationship who holds a position of power or authority or a senior position in the organisational hierarchy makes a sexually-oriented overture to a subordinate, the latter is necessarily at a disadvantage. The subordinate's ability to respond is inevitably compromised, whether an unwelcome approach is made in an aggressive or offensive manner or is merely flirtatious as a form of inquiry about the prospect of a mutual attraction. If the subordinate is upset or offended, or simply not interested, how should they respond? Is the overture serious enough to warrant recourse to formal contractual or statutory procedures and, if not, what is the alternative? Will rejection of the advance – even if it is only a flirtatious suggestion politely declined – result in retaliation? And with what work-related consequences?<sup>115</sup>

[404] The possibility of retaliation is recognised as contributing to decisions by many persons subjected to unwelcome sexual advances to remain silent, as is choosing to “go along to get along”.<sup>116</sup> Even though the absence of a protest or objection at the time of the harassment is not disqualifying, remaining silent for reasons which are understandable creates difficulties in proving, at a later stage, that the conduct was unwelcome or not wanted.

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<sup>115</sup> An inherent disadvantage exists even if the overture of the senior party is not unwelcome at the time. If the relationship flourishes, it is inevitable that promotional opportunities will be affected, particularly if the relationship becomes known to others. If the relationship later ends on bad terms, and it is untenable for both parties to remain in the workplace, it is highly probable that the subordinate will be the one who is sacrificed.

<sup>116</sup> See Ramit Mizrahi “Sexual Harassment Law After #MeToo: Looking to California as a Model (2018) 128 Yale L.J. Forum 121 at 9.

[405] In my view, therefore, where a complaint of sexual harassment has been made alleging intentional sexual conduct or language, and there is a power imbalance favouring the perpetrator over the complainant, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not. And in cases of power imbalance, the inevitability of detriment justifies treating the imbalance as an aggravating factor in assessing the seriousness of the harassment.

[406] It is self-evident that merely harbouring sexual thoughts cannot amount to conduct capable of supporting a sexual harassment allegation. Sexual harassment occurs when unwelcome sexually oriented thoughts, wishes or intentions are conveyed to the person affected. What Ms MacGregor complains of is not that Mr Craig continued to have romantic feelings for her, or that he was interested in having some form of sexual or intimate contact, but that he expressed those feelings and thoughts to her in the context of a working relationship. That is not to disregard Ms MacGregor's acknowledgement that, throughout most of their relationship, they had a close friendship.

[407] The allegation said to be defamatory of Mr Craig is that the harassment was not merely confined to unwelcome conduct which might be regarded as unreasonable, manipulative or even "unChristian", but that it was of a sexual nature. It is necessary to distinguish, therefore, between the conduct referred to by Ms MacGregor which amounted to Mr Craig making unreasonable demands upon her time, and conduct in the form of saying things, or sending text messages or letters, which conveyed to Ms MacGregor that Mr Craig harboured an inappropriate and unwelcome degree of romantic affection for Ms MacGregor or had thoughts and feelings about her which were sexually oriented.

[408] It might be inferred from several of Ms MacGregor's responses to statements by Mr Craig about which she later complained that the statements were welcomed or appreciated by her at the time. Ms MacGregor's evidence, however, was that Mr Craig had done his best to manipulate her and that it had taken her "a while to unravel all that manipulation and to figure out what was actually going on." Ms MacGregor also said that as time had gone on she realised that Mr Craig was putting financial pressure

on her and that she had concluded that “perhaps” the financial pressure was so that she would sleep with him.

[409] I invited the parties, therefore, to make further submissions on whether sexual harassment occurs in circumstances where the Court finds it to be proved that the complainant did not turn their mind to whether sexually oriented language or behaviour by the harasser was unwelcome at the time it occurred, but subsequently concluded, on reflection, that the conduct was unwanted or offensive. Such circumstances might occur where, for example, there is exploitation of a power imbalance and it is only later that the complainant believes they had been manipulated into a consensual sexual relationship.

[410] It is implicit in the statutory definitions and what I have held to be the non-statutory or ordinary meaning that whether there was sexual harassment must be proved by reference to the circumstances that existed at the time it is alleged to have occurred. Those circumstances include the element of the definition that requires that the behaviour complained about must be unwelcome or offensive. I accept, however, that contemporary usage of the term “sexual harassment” in the #MeToo era may encompass the exploitation of power imbalance in the circumstances discussed in the preceding paragraph. And it may be that the statutory definitions will require amendment in the light of greater societal awareness in 2018 of the way in which employees may be disadvantaged by the exploitation of a power imbalance in a workplace. I accept Mr Craig’s submission, however, that an extended definition of the kind discussed was not raised on the pleadings in this case, nor by the evidence and the parties’ submissions. In any event, the findings of fact made below in respect of the causes of action founded on statements asserting sexual harassment by Mr Craig make the issue academic.

*The meaning of “sexual harassment” and the principles to be applied*

[411] For the purposes of this proceeding, therefore, I apply these principles:

- (a) The ordinary and natural meaning of the term “sexual harassment” is intentional conduct or language of a sexual nature, in a workplace,

professional or social setting, that is unwelcome, unwanted or offensive to the person who is subjected to it at the time it occurs.

- (b) Conduct or language of a “sexual” nature is that which relates to, or tends towards, or involves sexual intercourse or other forms of intimate physical contact.
- (c) Assertions that there was “harassment of a sexual nature” and that a person “sexually harassed” another have corresponding meanings.
- (d) Where a sexual harassment complaint involves an allegation of intentional sexual conduct or language and there is a power imbalance favouring the perpetrator over the complainant, it is reasonable to draw a rebuttable inference that the sexual conduct or language was unwelcome, whether the complainant objected at the time of the alleged harassment or not.
- (e) The inevitability of detriment to a person subjected to sexual harassment in a case involving a power imbalance justifies treating the imbalance as an aggravating factor in assessing the seriousness of the harassment.
- (f) For a defendant in this case to succeed in the defence that the assertions that Mr Craig was guilty of sexual harassment were true, the defendant must prove each of the elements on a balance of probabilities.

### **Did Mr Craig sexually harass Ms MacGregor?**

[412] The complexity of the issues as they arise in this case, and the need to take a nuanced approach to these questions, demonstrate why it has been necessary, regrettably, to provide a detailed account of Mr Craig’s behaviour and communications by him to Ms MacGregor, whether in the form of physical conduct, text messages, letters sent to her by email or by what he said to her in her presence.

[413] Determining whether any sexually oriented behaviour was unwelcome or offensive to Ms MacGregor will depend on what language or conduct is said to amount to harassment and at what time during the relationship the behaviour occurred. It is apparent from its history that the relationship changed in nature over its three-year duration and that Mr Craig's conduct towards Ms MacGregor took a variety of forms.

*Was the impugned conduct sexual in nature and was it unwelcome?*

[414] The allegations that, in 2014 particularly, Mr Craig required Ms MacGregor to work inordinately long hours, or required her to travel long distances with him by car, if accepted, might provide background evidence indicating that Mr Craig had an undue interest in spending time in Ms MacGregor's company. That conduct does not amount to sexual harassment without more. The unwanted conduct of a sexual nature referred to in Mr Slater's published statements may be proved or disproved by reference to the letters and text messages which were adduced in evidence, by Ms MacGregor's oral evidence of Mr Craig making comments of a sexual or romantic nature in his conversations with her, and by the evidence of Ms MacGregor's responses.

[415] To illustrate the basis for my findings on these matters, it is unnecessary in the analysis that follows to repeat the detail of the events to which I refer or to mention all of Ms MacGregor's complaints. It is sufficient to refer to the principal occasions on which Mr Craig and Ms MacGregor conveyed their thoughts and feelings to the other about relevant matters.

(i) *The 2 November 2011 letter*

[416] Mr Craig's letter to Ms MacGregor of 2 November 2011 contains a mixture of encouraging comments about her performance and her personal qualities. But as I have observed, however, the letter also contains flirtatious and sexually suggestive elements. I refer particularly to the following:

The other day I got asked some questions. I have great people that keep tabs on me. Questions were: "Colin, are you having an affair?"  
"Do you think your relationship with your PA (i.e. you) is special?"  
"Have you kissed her?"  
- It's great to have people that ask the straight questions.  
Well, obviously the answer to the first is 'No', unless I missed something ☺.

The second question was interesting; I said, "Yes" ... Anyway - not that I said all that to my friend - I just said, "Yes - I think we work amazingly well together." And again, obviously the answer to last Qn was "no", not that I wouldn't want to, a lot, but that is a boundary.

[417] The overtly sexual reference to wanting to kiss Ms MacGregor "a lot" is purportedly qualified by his suggesting that he would not do so because that would cross some form of boundary. The remark is typical of Mr Craig's comments on later occasions: he would make a reference to some form of sexual activity or sexual attraction to Ms MacGregor but would then purport to resile or withdraw from the statement, indicating to Ms MacGregor that, while he harboured sexually oriented thoughts or feelings about her, he recognised they were inappropriate and would not act upon them.

[418] An example is Mr Craig's reference to an occasion on which he had asked Ms MacGregor to dress more modestly than she had on an occasion where she was wearing a "low cut top", and Mr Craig said that he had looked down the top she was wearing. Immediately, and without offering an excuse, he apologised and asked her to forgive him for letting his eyes go where they should not have gone. Although it was qualified by Mr Craig's acknowledgement that his conduct was inappropriate, this was an overt reference to Mr Craig's sexual attraction to Ms MacGregor. That was recognised by Mrs Craig who said that when Mr Craig showed her that part of the letter much later, she "wanted to deck him."

[419] It is not immediately clear what Mr Craig's purpose was in making these statements in the November 2011 letter about wanting to kiss Ms MacGregor and about having looked at her cleavage. Whatever his purpose, and whether Ms MacGregor was an employee or a contractor, it was highly inappropriate, sexually-oriented conduct in the context of a work relationship in which Mr Craig exercised considerable power and influence over her. Given that Mr Craig frequently acted in this way towards Ms MacGregor over the ensuing working relationship, I conclude that this conduct was deliberately manipulative and that it was intended to exploit Mr Craig's position of authority over her and what Mr Craig apparently viewed as Ms MacGregor's lack of self-esteem. Nevertheless, in view of how the relationship developed during November 2011, I am unable to conclude firmly that Ms MacGregor

regarded Mr Craig's behaviour as unwelcome at that time. The comments, however, undoubtedly sent confusing messages to her.

[420] As I have found, Ms MacGregor quickly became and remained for a considerable time very taken by her position. She considered Mr Craig to be someone who understood her, shared common interests and values, and regarded her highly. Ms MacGregor also acknowledged that, in 2011, Mr Craig and she developed a close emotional connection with each other. In those circumstances, it is understandable that Ms MacGregor would respond positively to those parts of the letter of 2 November 2011 which praised her both as a person and as Mr Craig's assistant. As her responses to the content of at least some parts of the 2 November 2011 letter demonstrate, Ms MacGregor expressed what I consider was genuinely held gratitude to Mr Craig and a degree of affection for him throughout the relationship until the last few months before she resigned.

*(ii) The incident on election night 2011*

[421] It is apparent from the nature of the communications between Mr Craig and Ms MacGregor between the letter of 2 November 2011 and election night on 26 November 2011 that, early on in their association, Ms MacGregor may have allowed her appreciation of Mr Craig to develop into a form of romantic attraction. Such emotions appear to have increased as the intensity of their working relationship elevated in the lead-up to the 2011 election when they were working together over long hours each day. I repeat text messages sent by Ms MacGregor on 21 and 22 November:

... I know im not meant to say this, but i really enjoyed spending time with you today.. And i think its very unique that we connect and communicate so instinctivly. Wish I could say goodnight the way i really want to...

We certainly bring out the best in each other. And i love that we see the world in a similar way. God is doing wonderful things through u. Get comfy, and dream big dreams tonight:) phone on silent k! huuge hug, and so much love and gratefulness to u for who u are. OoO0Oo0

It is not surprising, therefore, that the intimate encounter late at night on 26 November 2011 occurred.



[422] I have found that both Mr Craig and Ms MacGregor acknowledged that the intimacy should not be repeated. Ms MacGregor attributed the incident to her being tired and emotionally wrung out and said it did not signify any genuine interest in a serious liaison with Mr Craig. That is likely to be true but, as I have held, I do not accept Ms MacGregor's evidence that she felt scared and awful about what had occurred. The text message she sent to Mr Craig late in the evening on 28 November 2011, two days after the election, in which she told Mr Craig he made her "heart melt" and signed off, "Love ya. Nanite", is inconsistent with her holding such concerns at that time. Ms MacGregor's denial that there was any romantic element to that comment, and her comment that it was not possible to know the context in which she expressed herself in those terms because Mr Craig had destroyed or failed to disclose the messages he sent to her by text at that time, were evasive.

[423] I accept, however, that up to the end of 2011 Ms MacGregor was confused and likely to have been distressed by finding herself in a position of some internal conflict because of Mr Craig's emotional and sexual overtures. Such feelings would not be uncommon in a work relationship involving the exploitation of a power imbalance. The imbalance of status and power in Mr Craig's favour, and the difference in the age and maturity of the parties, characterise the relationship throughout. Ms MacGregor's evidence that she sought counselling assistance in November 2011 was not challenged by Mr Craig in cross-examination and is consistent with what I infer she was feeling around that time. Mr Craig denied that Ms MacGregor reported to him that the counsellor had warned her that she was being manipulated by a rich man; he suggested that she told him only that the counsellor had expressed concern that Mr Craig would dismiss her because of the election night incident. If Ms MacGregor did alert Mr Craig to such a concern, as he says, it should have been clear to him that the appropriate course for him to follow was not merely to reassure her that her job was safe notwithstanding what had occurred. He ought to have assured Ms MacGregor that he also recognised that it was inappropriate for him to give any form of expression to being sexually attracted to her and thereafter to refrain from any communication or conduct of that kind.

[424] Viewed in the context of the nature of the relationship at that time, and what occurred, however, the evidence falls short of establishing that writing the letter of

2 November 2011 and the intimate encounter on election night amounted to acts of sexual harassment by Mr Craig. They were sexually oriented and wholly inappropriate, but I cannot find, on the evidence, that Ms MacGregor probably found them unwelcome; her communications with Mr Craig around that time suggest otherwise. Those events, however, provide relevant background to the assessment of Mr Craig's conduct from the beginning of 2012 to Ms MacGregor's resignation in September 2014.

*(iii) The 7 February 2012 letter*

[425] Mr Craig's letter of 7 February 2012 contains a mixture of an appraisal of Ms MacGregor's performance in her role as his assistant and advisor and an assessment of her personality and, particularly, the attributes which Mr Craig regarded as positive or praiseworthy. But it also contains prominently his expression of continuing sexual interest in and desire for her, such as this passage:

There is between us something special and wonderful. It enables us to work perfectly as a team and to do great things. It makes it fun and exciting. There is also a strong attraction to each other. We do love each other but recognize that there are boundaries in place. For my part spending more time apart has not changed what I think or feel. What about you now you have a boyfriend and we have spent time apart? It's OK if it has - let me know.

I know you quite well now. I am glad I do, it is an honour and a privilege to know you. Seriously I mean this. I love spending time with you.

Physically I do desire you, there are sometimes I just want to kiss you and ... well ... go further .. I am just being honest this is how it is. I have resisted going down the kissing track and shall continue to do so. I have left the door open for you to say if you need that (and I want you to be brave and honest enough to ask if necessary), but I expect it would be infrequent and of course there are still boundaries.

I have concluded that the sexually oriented content of the letter was not welcomed by Ms MacGregor.

[426] I accept that between the election and Christmas 2011, Mr Craig and Ms MacGregor discussed and agreed that they should place boundaries around their relationship to confine it to professional interactions and other exchanges which amounted to no more than appropriate friendship, and leave out any form of romantic

or sexual element. I accept also that it took Ms MacGregor some time to come to terms with that approach after the elevated emotional context of the 2011 election and the election night incident. Her uncertainty was reflected in exchanges of text messages in December 2011 in which Mr Craig and Ms MacGregor both refer to missing each other's company.

[427] It has been important to the conclusions that I have reached that, in the context of a working relationship which was to continue for over two-and-a-half years, the only expressions of interest by Ms MacGregor in what might be described as intimate contact with Mr Craig were those made within a few days after the 2011 election. There is no evidence that Ms MacGregor expressed herself in those terms in 2012, 2013 or 2014, and no evidence that Ms MacGregor initiated any form of sexual communication or banter with Mr Craig at any time.

[428] Despite purporting to agree with Ms MacGregor that it was necessary to put appropriate boundaries around their conduct towards each other, Mr Craig overstepped any boundary which might have been appropriate for an employer to observe when he wrote the February 2012 letter. The second paragraph contains sexual innuendo:

There are lots of things I would like to do, but I really need to stick to what was appropriate (LOL), and "no" I won't tell you what else crossed my mind.

The section headed "About the Job" is a short but highly complimentary statement about Ms MacGregor's performance and Mr Craig's expectation that she would continue to serve him well. The next section, headed "You and Me" contains overtly sexual references:

*There is also a strong attraction to each other. We do love each other but recognize that there are boundaries in place. For my part **spending more time apart has not changed what I think or feel.** What about you now you have a boyfriend and we have spent time apart? It's OK if it has – let me know. ... **Physically I do desire you, there are sometimes I just want to kiss you and ... well ... go further ..** I am just being honest this is how it is. **I have resisted going down the kissing track and shall continue to do so. I have the door open for you to say if you need that (and I want you to be brave and honest enough to ask if necessary), but I expect it would be infrequent and of course there are still boundaries.***

(Emphasis added.)

After declaring his continuing sexual interest in Ms MacGregor, Mr Craig invited a similar response from Ms MacGregor and then immediately applied the contradictory, purportedly qualifying but undoubtedly manipulative technique of claiming that he recognised that it was inappropriate to give effect to his sexual desires.

[429] Mr Craig said many times while giving evidence that Ms MacGregor confided in him her most intimate thoughts and feelings; he knew that she looked to him for reassurance that she was valued as an employee. Ms MacGregor wanted to know that Mr Craig regarded her aspiration to succeed as the press secretary for the high-profile leader of a political party as realistic and achievable. He told her that he would do only what was best for her. To reinforce the legitimacy of his assurances, Mr Craig surrounded them by references to their Christian faith, saying that it was "a God ordained thing that they met and worked together" and concluding with a statement of five things that he prayed for Ms MacGregor, listing a number of spiritual outcomes. It is difficult, however, to resist inferring deliberate sexual innuendo in the statement immediately following the list of prayers: "I pray for lots of other things too ...".

[430] In determining whether Ms MacGregor's failure to remonstrate with Mr Craig about his sexually oriented communications with her is evidence that she welcomed them, it is necessary to recognise and give due weight to the workplace setting and the imbalance in the relationship. Despite the very personal tone and intent of the February 2012 letter, it is not possible to consider it in isolation from the workplace relationship between Mr Craig and Ms MacGregor<sup>117</sup> which afforded the only basis for their spending any time together. All of their contact, including those occasions on which Ms MacGregor massaged Mr Craig's back, occurred in the context of Ms MacGregor's roles as press secretary and personal assistant. They had no independent personal relationship in which they might be considered to have interacted on equal terms.

[431] Mr Craig exploited his clearly dominant position in the relationship and there is no evidence that he ever considered how that might affect Ms MacGregor's ability

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<sup>117</sup> Ms MacGregor had signed the employment contract prior to Christmas 2011. At other times, when Ms MacGregor was a contractor, she was in a working relationship with Mr Craig in which he was in control.

to respond to his sexual overtures. Mr Craig did not demonstrate, at any point in his evidence in this proceeding, any understanding of the difficulties created for an employee by an employer's expression of intense feelings of emotional engagement and sexual longing. He never acknowledged the possibility that Ms MacGregor may have felt she could not protest about, and was obliged to tolerate, sexually charged language and conduct for fear of losing her employment or failing to meet her employer's expectations. Instead, Mr Craig attempted to justify his words and conduct on the basis Ms MacGregor and he had a "special and wonderful" relationship, as if they were engaging in intimate exchanges on equal terms outside the workplace.

[432] Moreover, Mr Craig displayed no appreciation of the potential for Ms MacGregor to be confused by his invitation to her in the February 2012 letter to tell him whether she continued to feel a strong attraction to him and to love him ("while recognising that there are boundaries in place") in view of their having spent time apart and Ms MacGregor having apparently acquired a boyfriend. He failed to address the inherent inconsistency in saying that, while there were "still boundaries", he had left the door open for Ms MacGregor to say if she needed him to kiss her. In the 7 February 2012 letter, Mr Craig expressed "true love" for Ms MacGregor, telling her he cared as deeply for her as someone could ever do, and a few lines later encouraged her to be "a supporter and helper" of his wife, Helen, and to help strengthen and build his marriage. The extreme irony, if not hypocrisy, of this proposition appears never to have occurred to him. The evidence of Mr Craig's conduct in his relationship with Ms MacGregor and his infatuated attraction to her, while professing to be happily married and a champion of family values, demonstrates that he was somewhat self-absorbed and oblivious to the impact of his behaviour on Ms MacGregor.

[433] Mr Craig's lack of insight into the effect of the February 2012 letter on Ms MacGregor coloured his reaction to her response and led him to repeat his behaviour. Ms MacGregor did not help her cause when she replied to Mr Craig by text message on Monday, 13 February 2012 in an email with a subject line, "Thank-you". I repeat it:

I just wanted to say thank-you So so so sooo much for your letter. Some of the words in it are powerful. It means so much to me that you have taken the time to write it. Thank-you.  
I'm re-reading and re-reading it ☺

See you when you get here ☺

[434] When asked in cross-examination by Mr Craig whether she accepted that her text was a very positive response to the February 2012 letter, Ms MacGregor replied:

To parts of it. I said, "Some of the words," so if you can see the letter, part of it is really good and then you've interspersed dodgy bits and I haven't commented on those.

[435] There were the following exchanges between Mr Craig and Ms MacGregor during his cross-examination of her:

Q. So you'd accept that on the face value at least, this email is a very positive response?

A. I can see how you would have taken it that way but I was trying to ignore your dodgy bits and just comment on the bits that you wrote about, you know, my professional ability and all the rest of it.

Q. Do you accept that someone receiving this sort of response might think they had done the right thing?

A. Yes, at that point, yes.

[436] I acknowledge that Ms MacGregor's brief response to the February 2012 letter contains no indication that she found the sexual references to be unwelcome. As Ms MacGregor fairly conceded, Mr Craig may have been encouraged by the response to think that she welcomed all of the sentiments he expressed, including his expressions of sexual interest. Nevertheless, I accept as credible Ms MacGregor's evidence that she chose at that time, and later, to ignore what she described as the "dodgy bits" of Mr Craig's communications with her and thank him or otherwise respond with gratitude to his positive comments about her character, her work performance and her value to him as his assistant and a friend. I am satisfied that Ms MacGregor took comfort in the effusive approval of her work performance. She was encouraged by Mr Craig's assurance that he saw a long-term future for their working relationship, and by his expressions of support for her wellbeing generally, including the success of her relationship with her boyfriend. I accept Ms MacGregor's evidence that, despite misgivings over Mr Craig's expressions of sexual interest in her,

she felt she had to remain in her position to enhance her career prospects or, at least, not to damage them. Protesting about Mr Craig's behaviour would have placed her continued employment in jeopardy.

(iv) *Ms MacGregor's Christmas card of December 2012*

[437] The note inside the Christmas card given by Ms MacGregor to Mr Craig at the end of 2012 confirms that, notwithstanding her evidence that she regarded Mr Craig's sexual interest in her as inappropriate and unwelcome, she remained committed to her role as his press secretary and personal assistant:

It has been a pleasure, and a real honour working with you over the past year.  
You have become much more than a boss –

You are a dear friend, a mentor, and a man I have great respect for.

I deeply value your friendship.

Colin, you are consistently proving your strength of character. You are a man of your word. You have integrity. You have a big heart and you genuinely care for people.

I love how you see life through more than your natural eyes - you see much deeper, and you act on what you see with your spirit. Living and seeing life more fully in this way in light of eternity is rare, and wonderful.

I have great respect for your wisdom, your determination, your strength, your intellect, your can do attitude, your gentleness, kindness and self-control.

As I ponder your qualities I can clearly see so many spiritual fruits – of the Holy Spirit – in your life. This is testament to your decision to follow Christ fully, with everything you are.

You have won my deepest respect.

I am with you and I have faith in your ability to make a valuable difference in New Zealand.

With love, Rachel

It is also evident from the note that she was fully engaged in shared spiritual aspirations with Mr Craig.

(v) *The 24 December 2013 letter*

[438] I refer to one other example of Mr Craig making sexually oriented remarks while purporting to approve Ms MacGregor's work performance and provide personal encouragement. The letter sent by Mr Craig to Ms MacGregor on 24 December 2013, is notable for the poem headed "Two of Me" which was photographed and inserted into Mr Slater's Whaleoil blog at 3.15 pm on 19 June 2015. It reads:

***Two of Me***

*There is only one of me it's true  
but I wish this were not the case  
because I wish that I could have you*

*If instead of one man, I was two  
that would be one for all the others  
And one of me, for you.*

[439] Mr Craig denied in evidence that his comment in the 24 December 2013 letter, "OK no I can't really say what I want" [in 2014], referred to having a sexual relationship with Ms MacGregor. I find, however, that the comment was intended to convey to Ms MacGregor that, despite the "boundaries" they had agreed to place around their relationship, he remained sexually interested in her more than two years after the election night incident. I am influenced in this view by the implied sexual references in the third of the poems included in the letter:

...

You are beautiful because your lips are so amazing to kiss.

You are beautiful because your skin is so soft.

You are beautiful because you have the most perfect .....

(LOL .. Ok I deleted a couple of lines and stopped this section.) Please know that you are beautiful.

[440] Mr Craig admitted to Mr Henry that the ending of the poem, which he described as "a list of affirmations", was inappropriate. He was not pressed to say what had been deleted or left unsaid at the end of the poem, but he acknowledged in cross-examination that it was "pretty obvious where [he was] going to go with it." He accepted that the part he said he had deleted went beyond the boundaries Ms MacGregor and he had agreed, and that it was also inappropriate because he is



married and she had a boyfriend.<sup>118</sup> I am satisfied that the way the poem ended was deliberately sexually suggestive and that Mr Craig intended the poem to indicate to Ms MacGregor that, at the end of 2013, he retained a romantic and sexual interest in her.

[441] Mr Craig denied that he was "working on" Ms MacGregor's Christian beliefs to try to support the inappropriate aspects of the letter. I am satisfied, however, that his constant references to God, Christian values and beliefs and other spiritual matters was intended, at least in part, to normalise the sexual references as a legitimate element of their "special" relationship.

*Conclusion – Mr Craig sexually harassed Ms MacGregor*

[442] The sexually oriented statements included in Mr Craig's letters to Ms MacGregor of 7 February 2012 and 24 December 2013 amounted to behaviour comprising the use of language of a sexual nature. In making these statements, Mr Craig exploited his dominant position in the workplace relationship, justifying a presumption that his behaviour was unwelcome. Mr Craig's evidence did not persuade me otherwise and, in any event, I accept Ms MacGregor's evidence that Mr Craig's expressions of affection and sexual interest were unwelcome to or unwanted by her at these times. Although she denied that Mr Craig had sent her "sext" messages, Ms MacGregor complained that Mr Craig also made similar comments about his feelings for her in text messages to her and, at least occasionally in private conversations, in 2014. I am satisfied that that probably occurred, but because those allegations were vague and not supported by references to any documentary evidence, it is not possible to make any finding about the frequency and timing. It is sufficient to say that I am satisfied that Mr Craig reminded Ms MacGregor from time to time during the first half of 2014 that he continued to think about her in the manner expressed in his earlier letters.

[443] In summary, I find that Mr Craig sexually harassed Ms MacGregor on multiple occasions from early 2012 to 2014 by telling her that he remained romantically

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<sup>118</sup> That concession may be contrasted with the assertion in the Chapman Tripp letter of 13 March 2015 that the letter had been misread and that it was intended to encourage Ms MacGregor, whom Mr Craig knew to be someone who had "struggled with her own self-image and worth".

inclined and sexually attracted to her, and that those expressions of his views were not welcomed by Ms MacGregor at the time they were communicated to her. Ms MacGregor chose not to complain about the harassment because of concern about the effect of a complaint on her employment.

**Did Mr Craig send Ms MacGregor sexually explicit text messages that were unsolicited and a form of sexual harassment?**

[444] Mr Craig firmly denied that he had ever sent Ms MacGregor a "dirty" sexually explicit text message and no evidence of any such message was produced. Although Mr Slater claimed in Publication 1 that he had copies of "dirty text messages that had been sent as well", that was not true. For proof of sexually explicit text messages, Mr Slater relied upon the evidence of Mr Williams telling him that he had seen sexually explicit comments by Mr Craig in the written material he had received.

[445] Mr Craig claimed that large portions of his cellphone records were no longer available for disclosure. Mr Henry submitted that Mr Craig had either disposed of cell phones he used, or deliberately deleted copies of text messages from his cell phone, in an attempt to conceal damaging content. If Ms MacGregor had given evidence that she had received "sexts" from Mr Craig, it might have been appropriate to draw adverse inferences against Mr Craig on account of his failure to produce the relevant records. But Ms MacGregor expressly denied that she had received any "sext" or sexually explicit text message from Mr Craig.

[446] It seemed to me, as I listened to Mr Slater's evidence under cross-examination by Mr Craig, that Mr Slater had conflated a number of Mr Williams's statements to him about conversations and text messages between Mr Craig and Ms MacGregor and some of Mr Craig's letters. While I am prepared to accept that Mr Slater honestly believed in the existence of "sext" messages, his view was founded on nothing more than an inference he drew from what Mr Williams had told him, and which he then misquoted as a statement of fact, claiming untruthfully that he (Mr Slater) had copies of the "dirty text messages". The imputation that Mr Craig sent "dirty text messages" to Ms MacGregor was not strictly true, but only so far as the medium of communication is concerned. The medium by which the messages were communicated is immaterial to the aspect of the statement that is defamatory.

[447] The essential sting of the statement, taking the publication as a whole, is that Mr Craig sexually harassed Ms MacGregor by sending her, in writing, sexually oriented messages that were unsolicited. In all material respects, the statement is substantially true.

**Did Mr Craig sexually harass Ms MacGregor so seriously that he paid her a six-figure sum in settlement?**

*Was the sexual harassment serious?*

[448] Sexual harassment occurs in many and varied circumstances and can take many and varied forms. While sexual harassment is to be deplored however it occurs, some forms may properly be regarded as more serious than others, measured by factors such as the nature of the harassment, the period of time over which it occurs, and the potential for harm. Those factors are capable of objective assessment. I have held that detriment, disadvantage or harm is inherent in the concept of sexual harassment, and that is so no matter how it is occasioned. The degree of harm actually caused, which requires a subjective analysis of the effect on the complainant, is susceptible to variation depending on the personal circumstances of the person subjected to it. Harassment which may objectively be judged to be relatively minor may nevertheless have a profound and lasting effect on a vulnerable person. Although not determinative, therefore, the effect on the person harassed will be a relevant consideration in determining the seriousness of the harassment in a particular case.

[449] It is neither necessary nor helpful for present purposes to attempt to rank different types of sexual harassment in categories of seriousness; the assessment is heavily fact-dependent. But some general observations may be made. Depending on the nature and circumstances of the act or acts involved, sexual assault is likely to sit at the higher end of the scale of seriousness of sexual harassment generally; it can range from rape to a minor indecent assault, such as a fleeting touch. While overt or implied threats of adverse consequences in the event of a refusal to provide sexual favours to the harasser will almost certainly be considered to be serious, offering or implying benefits in return for sexual favours may be regarded as equally insidious. Arguably less serious harassment might involve a proposal to engage in an intimate

relationship which, although not welcomed or invited by the victim, is made without any express or implied consequential benefit or disadvantage.

[450] In the present case, the harassment took the form of expressions of romantic interest and sexual desire accompanied in most cases by an express acknowledgement that it would not be appropriate for Mr Craig to give any effect to his feelings. Ms MacGregor did not allege that Mr Craig had threatened her with adverse consequences if she failed to respond positively to his overtures, nor that he had offered her benefits if she accepted them. Moreover, the communications which I have held to amount to harassment occurred in the context of a long-term working relationship which had elements of a close personal friendship and mutual trust and respect, and in which Mr Craig was highly complimentary of Ms MacGregor's personal qualities and competence. He said he assured Ms MacGregor that what had happened on election night in 2011 would not affect her employment. I accept he intended to convey to Ms MacGregor that he would not terminate her employment as a result of what had occurred, or of her refusal to engage in a sexual or romantic relationship with him. I am satisfied that Mr Craig was genuinely interested in providing positive reinforcement to Ms MacGregor about her professional services during the time she worked with him. The evidence establishes also that, aside from the overtures which had a romantic or sexual component, Ms MacGregor welcomed and appreciated Mr Craig's effusive compliments and praise, and his support and reassurance, throughout most of the three-year working relationship. Finally, in terms of mitigating factors, I have noted above that Ms MacGregor fairly conceded that Mr Craig may have been encouraged by her response to the February 2012 letter to think that she welcomed all of the sentiments he expressed in it, including his expressions of sexual interest.

[451] I have considered the effect of the harassment on Ms MacGregor. I have said I accept that Ms MacGregor was confused about the way in which her relationship with Mr Craig developed not long after she was first engaged by him in August 2011, and that she undertook some counselling in November 2011 as a result. That response was a product of Mr Craig's abuse of his position of power. An objective observer would inevitably regard some of the contents of Mr Craig's letter of 2 November 2011 as exploitative. Nevertheless, because of the way she expressed herself in response to

the letter and after the election night incident three weeks later, I am not satisfied that Mr Craig's overtures were unwanted by Ms MacGregor at those times. But Mr Craig's view that Ms MacGregor's employment would not be affected by his conduct and sexually charged communications with her from early 2012 was insensitive and naïve, at best. The imbalance of power in the workplace relationship between Mr Craig and Ms MacGregor meant that Mr Craig's conduct was inherently disadvantageous to her: if his overtures had resulted in acrimony between them, there would never have been any prospect that Mr Craig would resign and depart from the Conservative Party leaving Ms MacGregor in her role. As the events in September 2014 proved, the only way the relationship could be terminated was by Ms MacGregor losing her job.

[452] I have accepted that Mr Craig's comments from the February 2012 letter onwards were not welcomed by Ms MacGregor and that, so long as she wished to remain in her roles with the Conservative Party, she had no means of avoiding Mr Craig's overtures. She should not have had to endure them. At least until early 2014, however, Ms MacGregor appeared to have been capable of suppressing her concern and making the most of Mr Craig's approval of her work performance and his admiration of her personal qualities. An example is her effusive praise of Mr Craig in the note inside her Christmas card in 2012.

[453] I am satisfied that the stress suffered by Ms MacGregor in her roles in late 2013 and in 2014 was caused in large part by the job demands which Mr Craig placed upon her. It is clear on the evidence that Ms MacGregor felt that the job she was undertaking was more onerous than she could reasonably have been expected to handle and that she came under work pressure of the kind described in the evidence of Ms Adair-Beets and Ms Storr. It is also evident that, by early 2014, Ms MacGregor was not managing her personal affairs well and that she was under financial pressure during 2014, despite the temporary relief of the February loan from Mr and Mrs Craig. Ms MacGregor became disaffected because of the demands of her roles and her inability to secure Mr Craig's agreement to a pay increase. I am satisfied, however, that Ms MacGregor's decision to resign in acrimonious circumstances only two days out from the 2014 election was not the result of calculated decision-making merely because Ms MacGregor was unable to persuade Mr Craig to increase her rate of pay. It was

inevitable that Ms MacGregor's sudden departure from a role which had a high profile amongst news media representatives would create something of a media storm. I have no doubt Ms MacGregor was aware that taking the decision to resign at that time could never benefit her personally.

[454] Ms MacGregor's abrupt resignation was a response to personal pressure generated by long working hours in Mr Craig's company, in an environment where, as Ms MacGregor put it in her letter of 20 June 2014, Mr Craig was making selfish demands upon her. Mr Craig's suggestion, in his letter of 18 June 2014, that Ms MacGregor was free to leave at any time demonstrated his lack of understanding about her situation. By that time, Ms MacGregor could not have afforded to resign. Mr Craig's refusal to discuss and resolve Ms MacGregor's claim that she was entitled to a higher pay rate during the electoral campaign contributed to her failure to render invoices for her services, placing her under even greater financial pressure than she had been experiencing. These matters combined to overwhelm her, leading to a decision which proved to have devastating long-term consequences for Ms MacGregor, Mr Craig and the Conservative Party.

[455] I infer from the timing of Ms MacGregor's submission of the sexual harassment complaint to the Human Rights Commission on the day of her resignation that her distaste for Mr Craig's sexual overtures was both genuine and an operative factor in her decision to resign when she did. I do not accept that the formal complaint to the Commission was contrived as a device to give her leverage in inevitable negotiations over a settlement of her pay claims.

[456] I am satisfied, however, that the conduct amounting to sexual harassment was not the principal cause of the distress Ms MacGregor experienced after her resignation, and it was not only that which caused her hostility towards Mr Craig in giving evidence in this proceeding. The factors leading to the complete breakdown of Ms MacGregor's relationship with Mr Craig were the public speculation around the time of the election in September 2014 about the cause of her resignation; publicity given to Mr Craig's communications with her in June 2015, as a result of Mr Williams's misuse of the documents he was given by Ms MacGregor in confidence in November 2014; Mr Craig's mishandling of the flow of information to the

Conservative Party board and the news media in 2015; and Mr Craig's self-serving breach of the confidential settlement with Ms MacGregor in June 2015.

[457] Mr Craig's continuing indications after 2011 that he retained a romantic interest and sexual attraction were unwanted by Ms MacGregor and wrong. I have found that Ms MacGregor chose not to complain about the harassment because of concern about the effect of a complaint on her employment. Although the manner of the harassment was not at the higher end of the scale of seriousness, it had serious consequences for Ms MacGregor in that it was an operative factor in the loss of her job, and Mr Craig's post-resignation behaviour aggravated the harm she suffered. Moreover, as I have held, the seriousness of the harassment is aggravated by its origins in an abuse of power in a workplace relationship. I assess the sexual harassment as moderately serious.

*Did Mr Craig pay Ms MacGregor a six-figure sum in settlement?*

[458] Analysing the components of the financial settlement between Mr Craig and Ms MacGregor, I have found that Mr Craig paid Ms MacGregor a sum of \$16,000 including GST in settlement of her claim that she was owed \$27,085.60 including GST, being the balance of her invoiced fees. That payment was unrelated to any allegations of sexual harassment. I have also found that the decision by Mr and Mrs Craig to forego the repayment of the \$18,990 loan and interest at the rate of 29 per cent per annum claimed by Mr Craig resulted in a financial benefit of around \$22,500 to Ms MacGregor that was unrelated to her pay claim. As well, Mr Craig contributed an undisclosed sum to Ms MacGregor by meeting part of her legal costs and expenses. That is unlikely to have amounted to more than a few thousand dollars, but the total value of the financial arrangements not related to the pay claim was significant.

[459] It is proper and reasonable to infer that the overall financial settlement, including the benefits that that were not related to her pay claim, influenced Ms MacGregor's decision to withdraw her sexual harassment claim. I accept her evidence that she would not have settled the sexual harassment claim without also resolving her pay claim and the issue of her debt to Mr and Mrs Craig. That means that, although no payment directly related to the sexual harassment claim was made,

Mr Craig made a substantial financial settlement with Ms MacGregor in exchange for the withdrawal of her sexual harassment claim to the Human Rights Commission. Whether the financial benefit to Ms MacGregor from the settlement might properly be described as “large” is a matter of perspective and context. The context is provided by Mr Slater’s use of “large” as an alternate or proxy for “a six-figure sum”. The statement that Mr Craig paid Ms MacGregor a six-figure sum is not true, but the material element of the allegation – the sting – is that Mr Craig provided Ms MacGregor with a substantial financial benefit in exchange for her not pursuing a justifiable claim that he had been guilty of sexual harassment. The potentially damaging aspects were the inference that serious sexual harassment had occurred and the inference, available from his agreement to a financial settlement, that Mr Craig acknowledged the complaint was well-founded. I have found that, in fact, the harassment was moderately serious.

[460] Taking the statement as a whole, I am satisfied that it has been proved that the third imputation, in substance, was not materially different from the truth in substance in that Mr Craig provided Ms MacGregor with a substantial financial benefit in exchange for her agreeing she would not pursue a justifiable claim that he had been guilty of moderately serious sexual harassment.

**Did Mr Craig lie to the Conservative Party board about the terms of the financial settlement with Ms MacGregor?**

[461] The fourth alleged imputation is that Mr Craig lied to the Conservative Party board by claiming that he had paid Ms MacGregor substantially less than six figures to settle the employment matters when in fact he paid her a six-figure sum to settle her sexual harassment claim.

[462] The fourth imputation is said to be contained in the following publication:

Cameron Slater: ... he has settled with a former staff member a large sum of money, I'm told it runs into 6 figures. And there is 4 allegations of sexual harassment and the complaint was actually laid with the human rights commission...

Larry Williams: What do you know about this settlement, I take it was a confidentiality agreement?



Cameron Slater: Well I don't know the exact number and a number of other people who are my sources can't disclose the exact number but everybody says it's 6 figures. Now you don't do 6 figure sums for settlement of employment matters which is what Colin Craig told the Board, and he also told the Board a substantially lower amount of money as well....

[463] The imputation is that (assuming Mr Craig had in fact paid Ms MacGregor a six-figure sum to settle her sexual harassment claim) Mr Craig lied to the Conservative Party by telling them only that he had settled Ms MacGregor's pay claims by paying her substantially less than a six-figure sum. The sting of the imputation is that Mr Craig covered up the truth of what he had done – that is, sexually harassing Ms MacGregor and then providing her with a financial incentive to withdraw her claim – by misleading the board through withholding relevant information.

[464] The Conservative Party board minutes of 30 May 2015 record only that Mr Craig said that there was a settlement agreement in place and that Ms MacGregor and he had resolved all of their differences. The emails containing Mr Craig's exchanges with Ms Rankin establish that Mr Craig told her that the settlement terms were confidential, but Mr Craig's evidence was that he told Ms Rankin that Centurion paid \$16,000 to settle the pay claim. That was true. Mr Henry said in opening the defendants' case that Ms Rankin would give evidence about what Mr Craig had said to the board, but she was not called as a witness. There is no evidence, therefore, that Mr Craig gave Ms Rankin or the board any other information about the financial aspects of the arrangements. Mr Craig's statement to the board that he had paid Ms MacGregor substantially less than six-figures to settle her employment claims was also true. As well, he did not pay her a six-figure sum to settle her sexual harassment claim or provide a financial benefit of around that amount.

[465] Nevertheless, in disclosing to the board only that he (or Centurion) had paid Ms MacGregor \$16,000 to settle her pay claim, Mr Craig deceived them. Having reported to the board that Ms MacGregor had made a "ridiculous" sexual harassment claim, he deliberately misled Ms Rankin and the board about the true nature of the issues between Ms MacGregor and him, and about how they were resolved, by withholding from them the highly material information that:

- (a) he thought Ms MacGregor was beautiful and considered he had a special and wonderful relationship with her;
- (b) he had sent emails, letters, and poems to Ms MacGregor expressing his romantic interest in and sexual attraction to her;
- (c) in November 2011, Ms MacGregor and he had engaged in intimate sexual contact;
- (d) he had written to Ms MacGregor in February 2012 confirming his sexual interest in her but saying that they would place boundaries around their conduct to ensure there would be no repetition of the 2011 election night incident;
- (e) despite the “boundaries” arrangement, he had continued to communicate his romantic and sexual interest to Ms MacGregor through emails and in person and by letter at least as recently as December 2013;
- (f) viewed objectively, his conduct amounted to moderately serious sexual harassment;
- (g) Ms MacGregor’s claim of sexual harassment involved a formal complaint to the Human Rights Commission;
- (h) the meeting with the lawyers had been a mediation conducted under the Human Rights Act;
- (i) he had acknowledged in the settlement agreement that on occasions some of his conduct with Ms MacGregor was inappropriate and he had apologised for it;
- (j) the settlement arrangements included his writing off a personal loan of over \$19,000 to Ms MacGregor; and

- (k) although Ms MacGregor had withdrawn her complaint to the Human Rights Commission as part of the settlement, she had not withdrawn her sexual harassment allegations.

[466] The maintenance of Mr Craig's political credibility depended on the board's acceptance that Ms MacGregor's allegations of sexual harassment were baseless and a product of her infatuation with him. Agreeing on a financial settlement to stop her claim from proceeding implied that Mr Craig accepted that the claim had merit. I am satisfied Mr Craig knew that if the board understood the true nature of his behaviour with and towards Ms MacGregor, the foundation and merits of Ms MacGregor's allegations against him, and the true nature of the settlement with her, the information would be exploited to his considerable political disadvantage by those on the board and within the Party who did not support him. It was inevitable that Mr Craig would suffer major reputational and political damage if the facts became known to the public. As well, such publicity would cause major harm to the political party he had founded and in which he had invested a considerable amount of his time, energy and financial resources. That is why he granted Ms MacGregor a substantial financial benefit in exchange for:

- (a) the withdrawal of a sexual harassment claim that had a genuine foundation and merit; and
- (b) an agreement that Ms MacGregor would keep both the nature of her allegations and the terms of the settlement confidential.

[467] The fourth imputation, therefore, was materially true in substance.

### **Findings about the defence of truth**

[468] I summarise the findings I have made about Publication 1 as follows:

- (a) It is true that Mr Craig was guilty of moderately serious sexual harassment of Ms MacGregor, on multiple occasions from early 2012 to 2014 by telling her that he remained romantically inclined and sexually attracted to her, and that those expressions of his views were

not welcomed by Ms MacGregor at the time they were communicated to her.

- (b) The imputation that Mr Craig sent “dirty text messages” to Ms MacGregor is not strictly true, but it is materially true in substance in that he sexually harassed Ms MacGregor by communicating to her sexually oriented written messages between early 2012 and 2014 that were unwelcome.
- (c) The imputation that Mr Craig sexually harassed Ms MacGregor so seriously that he settled the sexual harassment claim by paying her a six-figure sum of money is not strictly true, but it is materially true in substance in that he provided Ms MacGregor with a substantial financial benefit in exchange for her agreeing she would not pursue a justifiable claim that Mr Craig had been guilty of moderately serious sexual harassment.
- (d) The imputation that Mr Craig lied to the board of the Conservative Party by claiming he had paid Ms MacGregor substantially less than six figures to settle the employment matters when in fact he paid her a six-figure sum to settle her sexual harassment claim is materially true in substance, in that Mr Craig misled the board intentionally about the true nature of his behaviour with and towards Ms MacGregor, the foundation and merits of Ms MacGregor’s allegations against him, and the true nature of the settlement with her.

[469] It follows that Mr Slater has made out his defence of truth and that the first cause of action must be dismissed.

[470] In case I should be wrong about that, however, I next consider Mr Slater’s defence that Publication 1 was a responsible communication on a matter of public interest. The discussion on the defence will not be academic, in view of the findings I have made on other causes of action.

## **Defence of responsible communication on matter of public interest**

### *A matter of public interest*

[471] As I have indicated, Mr Craig does not dispute that, at the time of Publication 1, he was an aspiring member of Parliament and that statements about his character and conduct, made in the context of his suitability to lead the Conservative Party and become a Member of Parliament, were matters of public interest. I accept also that there was a legitimate public interest in Mr Stringer's criticisms of Mr Craig from within the Conservative Party.

### *Did Mr Slater act responsibly in making the statements?*

[472] Mr Craig argued, however, that the Court should hold, in respect of each of the publications, that the public interest defence should not succeed because the defendants have failed to prove that they acted responsibly. Putting the submission generally about the case as originally pleaded, Mr Craig argued that the defendants had abused the occasion of *Lange v Atkinson* privilege, as set out in his notice under s 41 of the Defamation Act, in that Mr Slater:

- (a) lacked a genuine belief in the truth of the allegations, or acted with reckless disregard as to their truth or falsity;
- (b) failed to apologise or retract any of the allegations once they were demonstrated to have been untrue;
- (c) published the statements as part of a campaign with Mr Williams and Mr Stringer to remove Mr Craig as leader of the Conservative Party, not with the intent of encouraging responsible public discussion on the matters of public interest relied upon; and
- (d) failed to act with the necessary degree of responsibility required by the privilege.

[473] He submitted further that the defendants' failure to act responsibly was established by Mr Slater:

- (a) publishing the defamatory words without seeing any documents relied upon as evidence of the truth of the statements;
- (b) giving weight to a biased and unreliable source of information while ignoring opposing information from other more reliable sources;
- (c) making statements based on inferences drawn without adequate evidence or knowledge of the underlying facts; and
- (d) publishing without making enquiries of, or putting the allegations to, Mr or Mrs Craig, or Ms MacGregor.

[474] In coming to my views about the relevant considerations for determining whether the defendants had made out the defence of responsible communication on the issues concerning Mr Craig's leadership of the Conservative Party and his candidacy to be a List member of Parliament, I was assisted by evidence given by Mr Barry Soper, the journalist who participated in the *Newstalk ZB* broadcast which included Publication 1. Mr Soper is a long-serving member of the parliamentary press gallery and a highly experienced political journalist who expresses his opinions on political matters, among other things, through a variety of news media, including radio and television, newspaper columns, online content and social media. The organisations that published or broadcast his material at the time of the 2014 general election were either subject to the standards imposed under the Broadcasting Act 1989<sup>119</sup> or by self-regulation through membership of the New Zealand Press Council, now the New Zealand Media Council.<sup>120</sup> Mr Soper said that he subscribed personally to those standards of accuracy, balance, objectivity and fairness. He agreed with Mr Craig that it was part of his approach to his role as a journalist to be objective or unbiased and to approach every story on its own merits. It was apparent from Mr Slater's evidence that his approach is different from that of Mr Soper, though not materially so on issues about the reporting of facts.

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<sup>119</sup> The Act imposes standards on those who broadcast sounds or visual images, or a combination of both. See ss 2 (definition of "broadcaster" and "programme") and 4 (responsibility of broadcasters for programme standards).

<sup>120</sup> See the website of the New Zealand Media Council: <http://www.mediacouncil.org.nz>.

[475] Mr Slater described himself as a journalist who was "a proud fiscal conservative and social liberal". He said that no one would be under any illusions about where he stands on things. He argued that the difference between himself and other journalists is that he never writes anything that does not agree with his "libertarian and conservative viewpoints that champion personal responsibility and small government." Mr Slater described journalists in the mainstream news media as keeping their political views to themselves and pretending to be fair and balanced but said that, when you looked at their writings, you can see there is a clear bias there. Those views influenced Mr Slater's approach to the maintenance of journalistic standards of conduct in his writing. Although Whaleoil had previously been a member of the Online Media Standards Association (now folded into the New Zealand Media Council), he no longer bound himself to those standards or to the procedure for addressing complaints that members had breached any standard. Mr Slater explained that he became disaffected when his political opponents used the OMSA standards as a foundation for making vexatious and time-consuming complaints against him, all but one of which were dismissed.

[476] The relevant New Zealand Press Council principles, at the time of the publications with which this case is concerned, were:<sup>121</sup>

#### Principles

##### 1. Accuracy, Fairness and Balance

Publications should be bound at all times by accuracy, fairness and balance, and should not deliberately mislead or misinform readers by omission or commission. In articles of controversy or disagreement, a fair voice must be given to the opposition view...

...

##### 4. Comment and Fact

A clear distinction should be drawn between factual information and comment or opinion. An article that is essentially comment or opinion should be presented as such. Material facts on which an opinion is based should be accurate.

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<sup>121</sup> They have remained in force for members of the New Zealand Media Council.

## 5. Columns, Blogs, Opinions and Letters

Opinion, whether newspaper column or internet blog, must be clearly identified as such unless a column, blog or other expression of opinion is widely understood to consist largely of the writer's own opinions. Though requirements for a foundation of fact pertain, with comment and opinion balance is not essential...

...

## 12. Corrections

A publication's willingness to correct errors enhances its credibility and, often, defuses complaint. Significant errors should be promptly corrected with fair prominence. In some circumstances it will be appropriate to offer an apology and a right of reply to an affected person or persons.

[477] When questioned about the New Zealand Media Council standards, Mr Slater accepted that publishers should make reasonable efforts to ensure that news and current affairs factual content is accurate. He acknowledged that publishers should not obtain information through misrepresentation and should not deliberately mislead or misinform readers by commission or omission. Mr Slater did not wholly ascribe, however, to the standards of fairness and balance, saying that his purpose was to express his opinions, not disguising his political philosophy, leaving it to others to decide whether or not they agreed with him. He professed to deal in facts (meaning the truth) and said that, where he was approached in a fair and reasonable manner by somebody claiming that he had made an error of fact, he would correct what he had written if it could be shown that he was wrong. Where he was merely threatened with legal action, he tended not to respond.

[478] Mr Slater was less clear about whether he accepted that, in articles of controversy or disagreement, a fair voice must be given to the opposition view. While acknowledging that it was usually appropriate to contact people who were to be the subject of articles, he did not consider it should be necessary to approach someone for comment when it was clear to him they would simply lie. In Mr Slater's view, where he was in possession of what he considered to be clear evidence in support of a statement he was proposing to make, there was no point in approaching the subject knowing that they would either lie or simply deny the allegation without offering any reason why it was unfounded.



(i) *What standards of responsibility should apply?*

[479] The extension of the availability of the public interest defence to unregulated bloggers, tweeters and other "citizen journalists" means that not all persons who may seek to take advantage of it are subject to standards of accuracy, fairness, balance and respect for privacy such as are imposed on mainstream journalists and news media organisations by statute or by self-regulation through membership of the New Zealand Media Council. Non-media commentators whom the Court of Appeal has identified as playing an important role in the debate on matters of public interest may take an overtly partisan or biased approach, or express themselves in extreme or provocative terms, in order to have their opinions noticed alongside those published in better-resourced mainstream news media. Where, for example, a commentator is focused on a particular project or policy of public interest to which they strongly object, they may exhibit antipathy or animosity towards a proponent of the policy, without displacing the primary motivation of attacking the policy. As the Court of Appeal has said, it is to be expected that difficulties raised by a case involving a defendant other than a recognised journalist or media organisation will be worked out on a case by case basis.<sup>122</sup>

[480] I accept that Mr Slater and other publishers of blog sites like Whaleoil are of a different kind from publishers of record, such as major newspapers that have a large circulation and whose editorial and news-gathering functions are considered professional and typically authoritative. It is not to be expected, therefore, that bloggers and those who use social media to express their opinions would or should accept the constraints of the New Zealand Media Council's principle that, on controversial issues, "a fair voice must be given to the opposition view". But that is not to say that, if Mr Slater and Whaleoil are found to have made an untrue statement of fact, they should be held to a different standard of responsibility when seeking the protection of a defence founded on responsible communication. Mr Slater's propositions, in my view, tend to conflate the distinct concepts of statements of fact and expressions of opinion.

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<sup>122</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [60].

[481] While the New Zealand Media Council's first principle is that publications should be bound at all times by accuracy, fairness and balance, Principle 5 recognises that balance is not essential in comment or opinion. The principle is qualified by the observation that opinions must be based on a foundation of fact. The laws of defamation reflect a similar approach. The defence of truth applies to statements of fact. The defence of honest opinion is available to protect expressions of opinion which may be partisan or biased, but is predicated on a requirement that the author must point to the existence of true facts upon which the opinion is based. Whether or not Mr Slater ascribes to the principles of good journalism, defamation laws impose similar constraints upon him. He appeared to acknowledge as much in his evidence. Although professing to believe that media commentary involved a "free-for-all on politicians", Mr Slater qualified his position by saying that there were "no rules and boundaries around politics and politicians essentially other than the law."

[482] It is fundamentally important to an understanding of the new defence and its application that, just like the *Lange v Atkinson* qualified privilege, it is concerned with a claim based upon damage to the reputation of a plaintiff caused by an *untrue statement of fact*. The claim is defensible if the author has acted responsibly on a matter of public interest. As the Court of Appeal said in *Durie v Gardiner*, the extension of the protection of the defence to unregulated commentators "who can be reckless means that the imposition of a responsibility requirement is highly desirable and a necessary safeguard for reputation and privacy rights."<sup>123</sup> There is academic support for the proposition that, where a blogger like Mr Slater claims to be a journalist and to take the benefit of journalistic protections such as source confidentiality, "such freedoms should be accompanied by an obligation to take on media responsibilities, such as the basic requirements of fair, truthful and balanced reporting" that are set out in, say, the Broadcasting Act or the principles of the New Zealand Media Council.<sup>124</sup> In *Slater v Blomfield*,<sup>125</sup> Asher J determined that Mr Slater was a journalist and Whaleoil a news medium, for the purposes of that case at least, with the result that Mr Slater was entitled to invoke the protection of s 68(1) of the Evidence Act 2006.

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<sup>123</sup> At [56] (c).

<sup>124</sup> Ursula Cheer "Regulatory Responses from a Southern Archipelago" in D Weisenhaus and S Young (eds) *Media Law and Policy in the Internet age* (Hart Publishing, Oxford, 2017) at 199.

<sup>125</sup> *Slater v Blomfield* [2014] NZHC 221.

The section entitles a journalist to withhold disclosure of an informant's identity if information was provided in exchange for a promise of anonymity. Mr Slater relied upon his status as a journalist to invoke the protection of s 68(1) in this case. Moreover, there is little material difference between the considerations described in the *Reynolds* principles and by the Court of Appeal in *Durie v Gardiner*<sup>126</sup> and the journalistic standards of accuracy, fairness, balance and protection of privacy set by the Broadcasting Act and the New Zealand Media Council. As Mr Slater accepted, accuracy is a fundamentally important standard to be applied but, of course, it is inevitable that errors of fact will be made in publications addressing matters of public interest.

[483] There is no principled reason, in my view, for holding that the law should impose on a blogger or commentator like Mr Slater a different standard for the responsible communication of facts from that which is applied to a national newspaper, radio station or television channel. After all, an untrue defamatory statement published by a news media organisation and the same untrue defamatory statement published by a blogger are no different in character. What is likely to differ is the effect of the untrue statement on the reputation of the plaintiff. That is a matter going to the determination of a remedy.

[484] Whether a statement addressing a matter of public interest was communicated responsibly will depend on the circumstances. Plainly, because the defence is invoked only where a statement has been found to be inaccurate, it would negative the defence entirely if the standard required the author of the statement to take all steps necessary to ascertain the truth of the statement before publishing it. It will be necessary in each case for the court to determine what consideration the author gave to the accuracy of the statement before it was made, and to assess whether any steps taken were what the circumstances reasonably required to meet a standard which has accuracy as one of its objectives. What is reasonable in the circumstances will be informed by the matters described by the Court of Appeal in *Durie v Gardiner*.

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<sup>126</sup> *Durie v Gardiner* [2018] NZCA 278, [2018] 3 NZLR 131 at [67].

(ii) *What were Mr Slater's motivations in making the statements?*

[485] Mr Craig placed considerable emphasis on Mr Slater's personal animosity towards him. I have considered whether Mr Slater was principally motivated not by an intention to contribute responsibly to the public debate on a matter of public interest but, through feelings of ill will towards Mr Craig, to conspire with Mr Williams and Mr Stringer to remove Mr Craig from leadership of the Conservative Party and from politics altogether. Mr Slater's hostility towards Mr Craig both as a person and as a political leader was obvious to me from the tone and content of his writings about Mr Craig and from what Mr Slater said about him in evidence. It is unnecessary to do more than to refer to one of the early postings by Mr Slater on the Whaleoil blog site when writing about Mr Walden's report to the Conservative Party board on its failure at the 2014 election. I have quoted Mr Slater describing Mr Craig as "a political retard" and "a deadset political idiot", and saying that New Zealand politics was better off without him. Under cross-examination by Mr Craig, Mr Slater confirmed that he had described Mr Craig variously as a "narcissist", "scumbag", "ratbag", "weirdo", "political spastic", and "nutcase" and said that he thought Mr Craig to be evil.

[486] I am satisfied also that Mr Williams, Mr Stringer and Mr Slater shared a common goal of seeing Mr Craig removed from any leadership position with the Conservative Party, including as a board member, and that they did not consider him a suitable person to be representing a party with conservative, Christian faith-based principles in Parliament, although they may have had different motivations for wanting that outcome. Drawing reasonable inferences from the nature of the emails authored by him which were adduced in evidence, it appears to me that, at relevant times, Mr Williams held conservative political views which he regarded would be best represented politically by the Conservative Party and that he did not regard Mr Craig's leadership of the Party as being in its best interests. The information he received from Ms MacGregor in November 2014, if not the genesis of his apparent personal animosity towards Mr Craig seems at least to have fuelled it to the extent that he considered he needed to make direct representations to members of the Conservative Party board, such as Mr Dobbs, Mr Day and Ms Rankin, and to provide them with information. He was also motivated to undermine Mr Craig's position by providing information to Mr Slater and other journalists or news media organisations.

Mr Stringer was a member of the Conservative Party board who appears to have got wind of issues about Mr Craig's relationship with Ms MacGregor both from sources within the Party and from his own observations, and also from Mr Williams and others. He considered those issues made Mr Craig unsuitable to lead the Party, notwithstanding Mr Craig's considerable financial contribution to the Party's resources. It is evident that he sided against Mr Craig with other board members such as Mr Baldock and that he was strongly motivated to take what were sometimes extreme steps after the 2014 election to remove Mr Craig from the Party's hierarchy.

[487] Mr Slater also considered Mr Craig to be unsuited to the leadership of the Conservative Party and to be elected to Parliament to represent a conservative point of view. His motivation was philosophical; he had no stake in the political futures of Mr Craig or the Conservative Party. It is immaterial that Mr Slater knew that Mr Craig's prospects would be adversely affected if he published information likely to damage Mr Craig's political credibility by exposing him as a person who had manipulated and sexually harassed a younger woman who was an employee; misled his Conservative Party colleagues about the true nature of his relationship with Ms MacGregor; acknowledged the truth of the allegations of sexual harassment by reaching a financial settlement in return for which the formal complaint to the Human Rights Commission was withdrawn; and insisted on the confidentiality of the terms of the settlement so that Mr Craig could maintain to the Conservative Party board and in public that the allegations of sexual harassment were unfounded.

[488] There was widespread speculation about Mr Craig's relationship with Ms MacGregor within the Conservative Party and among political journalists and commentators such as Mr Soper and Mr Hooton. It is important to my analysis of Mr Slater's motivation that, as I explain below, Mr Slater was the only commentator who had seen what he was entitled to regard as reliable evidence of Mr Craig's romantic and sexual interest in Ms MacGregor and evidence from a source directly associated with Ms MacGregor (Mr Williams) about the making of the sexual harassment claim and its settlement. That placed him in the position of being able to make allegations of fact with a greater degree of confidence than that held by journalists or commentators who were not privy to the information he had received. Against the background of widely publicised rumours about Mr Craig's conduct,

Mr Slater performed, in my view, an important role in breaking the news that the rumours had substance and could be proved.

[489] Undoubtedly, Mr Slater held personal animosity towards Mr Craig, and knew and intended that his communications would have a damaging political outcome for him, but he was principally motivated to release into the public arena information which he genuinely considered to be reliable and which would inform public discussion on a matter of undoubted public interest. To hold that Mr Slater was deprived of the defence of responsible communication on a matter of public interest in such circumstances would be to tilt the balance between freedom of expression on a matter of public interest and protection of reputation too far in favour of the latter. In my view, it would have an unduly chilling effect on political discourse of the kind which the public interest defence is designed to recognise.

*Conclusion – defence of responsible communication on a matter of public interest would succeed*

[490] Against that background, I begin the exercise of considering whether Mr Slater acted responsibly by determining what he knew or believed when he spoke to the *Newstalk ZB* audience at around 5.30 pm on 19 June 2015. I am satisfied that at the time of that publication:

- (a) Mr Slater was aware of widespread speculation within news media circles that Mr Craig had been involved in an intimate relationship with Ms MacGregor. The rumours and speculation raised issues of legitimate public interest because of Mr Craig's position as the leader of a conservative, values-focused political party, and a married man, whose party had shown serious prospects of gaining sufficient electoral support to win seats in Parliament in the 2014 election.
- (b) The existence of the media speculation was confirmed in the evidence given by Mr Soper and another news media commentator, Mr Matthew Hooton. The media interest had been rekindled by Mr Craig's sauna interview on 9 June 2015, when he passed off Ms MacGregor's resignation as being due to her inability to cope. That was evident from

the suggestion in the *Radio Live* interview with Mr Craig on the morning of 19 June that members of the Conservative Party board were questioning whether he had been honest with them about his relationship with Ms MacGregor, and from the introductory remarks and questions of Mr Larry Williams during the *Newstalk ZB* interview with Mr Slater.

- (c) Mr Slater had been told by Jordan Williams, in whom Ms MacGregor had confided, that she had made a formal complaint of sexual harassment to the Human Rights Commission and that Mr Craig had settled it on confidential terms which involved the payment of money. He was entitled to regard that information as reliable.
- (d) Mr Slater had been told by Mr Stringer or others that the Conservative Party board had not been fully informed and that board members had serious concerns about Mr Craig's having misled the board about his relationship with Ms MacGregor. That, too, was reliable information.
- (e) Mr Slater had received information from Jordan Williams about the nature of Mr Craig's communications with Ms MacGregor and had been shown a copy of the poem "Two of Me" from which a compelling inference of a romantic attachment to Ms MacGregor could be drawn. Mr Slater had been told of other communications, including those in a letter to Ms MacGregor which carried Mr Craig's signature.
- (f) Notwithstanding the information about these matters which Mr Slater had received, and which he considered to be reliable and credible, he learned that Mr Craig had denied, in the *Radio Live* interview that morning, that he had had an inappropriate relationship with Ms MacGregor.
- (g) Mr Slater was aware not only that Mr Craig had stepped down as leader of the Conservative Party but also that, in announcing his resignation, he had avoided making any reference to Ms MacGregor or the rumours

about his relationship with her and refused to answer any questions from the journalists present at his press conference. As far as Mr Slater was concerned, Mr Craig's denials and his refusal to answer questions about the matter merely heightened media interest and speculation.

- (h) Although Mr Slater's statements were published six months after the election, the circumstances of Mr Craig's resignation only two hours earlier brought the issues of his conduct and character into immediate focus, and the public had a legitimate interest in receiving informed news media comment without delay.

[491] In terms of news media commentary on what was unquestionably a significant political event on 19 June 2015, time was of the essence. Responsible news media outlets would reasonably be expected to provide not only information about what had occurred and what they knew or reasonably believed, but also to comment on the implications shortly after the press conference. Having regard to the circumstances, including what information Mr Slater had obtained prior to the *Newstalk ZB* interview, it would be unreasonable to expect him to have undertaken further inquiries to verify what I accept he genuinely believed to be the facts. I consider Mr Slater was entitled to consider it would legitimately serve the public interest for him to broadcast information confirming the rumours which were being widely discussed in public.

[492] In *Durie v Gardiner*, the Court of Appeal observed that seeking comment from the target of a statement, and reporting it accurately, was a core factor:<sup>127</sup>

It speaks to the essential sense of fairness the defence is intended to promote. In most cases it is inherently unfair to publish defamatory allegations of fact without giving the target an opportunity to respond. Failure to do so also heightens the risk of inaccuracy. The target may well be able to offer relevant information beyond bare denial.

[493] In my assessment, this is one of those exceptional cases in which a failure to seek a comment from the target of a news story does not weigh against the maker of the statement claiming the protection of the public interest defence. Mr Slater was aware of Mr Craig's evasive responses to inquiries by board members; his denial of

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<sup>127</sup> At [56] (e).



impropriety when questioned by a journalist earlier that day; his failure to acknowledge the speculation about his relationship with Ms MacGregor when resigning, and his refusal to answer any questions from journalists attending the press conference at his invitation. Mr Slater was entitled to assume, therefore, that Mr Craig would not provide any information about his relationship with Ms MacGregor and the reasons for her resignation beyond a bare denial of impropriety, and that asking him for comment would be futile. It might have been appropriate in other circumstances for Mr Slater to obtain confirmation of the allegations directly from Ms MacGregor but, in my view, he was entitled to rely on the information provided by her through Mr Williams (albeit without her approval) which included a degree of corroboration.

[494] If it had been necessary to do so, therefore, I would have held, regarding the imputations in the first cause of action, that the defence of responsible communication on a matter of public interest had succeeded.

**Third cause of action – Publication 4 – Whaleoil – 20 June 2015, 8.30 am**

[495] At 8.30 am on 20 June 2015, in a blog headed, "WILL THE CONSERVATIVE PARTY SURVIVE COLIN CRAIG?" Mr Slater said that Mr Craig's opponents would start a steady drip-feed of documents to the media to ensure that Mr Craig could not recover from the blow of standing down from the leadership. He said:

There is simply so much more to come. There are financial issues, contractual issues, sleight-of-hand with loans, GST rebates and other strategic trickery. And that's all before the nasty stuff, like letters written by a married man to beg another woman for an affair. And then no longer begging, but putting pressure on this woman financially. TXT messages. Unsolicited and unwanted. Some so lewd they are SXT messages.

[496] It is not disputed that Mr Slater published the statements in Publication 4. Mr Craig pleads that the meanings of the statements are that he:

- (a) tricked, misled and deceived the Conservative Party board in relation to loans and GST rebates;

- (b) sexually harassed Ms MacGregor by begging her for an affair and then (when she resisted) by putting her under financial pressure to sleep with him; and
- (c) sent Ms MacGregor numerous lewd and sexually explicit text messages which were unsolicited and unwanted.

**Do the statements bear the pleaded meanings?**

[497] I am not satisfied that the statement that there were "financial issues, contractual issues, sleight-of-hand with loans, GST rebates and other strategic trickery" carries the meaning pleaded. There is no reference in the statement to any deception of the board and only vague references to what might have been irregular decision-making on contractual, financial and strategic issues. Although Mr Craig was clearly the subject of the article, it included what were, at worst, only vague insinuations that he was engaged in some unspecified way in irregular dealings. That particular of the pleaded defamatory imputations is not made out.

[498] I am satisfied, however, that the other pleaded imputations are carried by the allegations contained in the statement. The allegation that Mr Craig, a married man, wrote letters begging another woman for an affair, in the context of it not being suggested that Ms MacGregor invited or welcomed Mr Craig's approaches, carries the meaning that he sexually harassed her by begging her for an affair. Although the statement refers only to Mr Craig "putting pressure on this woman financially", the inference to be drawn from the beginning of the sentence "and then no longer begging but ..." clearly carries the inference that Mr Craig began placing Ms MacGregor under financial pressure to sleep with him when begging her to do so had failed. I am satisfied also that the statement contained the implied allegation that Mr Craig sent sexually explicit text messages to Ms MacGregor.

**Were the pleaded meanings defamatory?**

[499] For the reasons given more fully in regard to the first cause of action, I find that the pleaded imputations were defamatory of Mr Craig.

### **Were the pleaded passages statements of fact or expressions of opinion?**

[500] The statements which I have held to be defamatory of Mr Craig were not supported by an emphasis on the truth of the statements as occurred in Publication 1, but they were clearly explicit statements of fact. Mr Henry did not argue otherwise. That means that the defence of honest opinion is not available to the defendants.

### **Defence of truth**

[501] I have held that Mr Craig sexually harassed Ms MacGregor, telling her that he was romantically inclined and sexually attracted to her. It is an exaggeration to say that he "begged" Ms MacGregor for an affair, but I am satisfied that the allegation was materially true. It is clear from Mr Craig's correspondence with Ms MacGregor after the election night incident in 2011 and on 7 February 2012 and 24 December 2013, that he maintained an interest in an intimate physical relationship with Ms MacGregor. He said in the quoted "You and Me" section of the 7 February 2012 letter that he desired Ms MacGregor physically, that sometimes he wanted to kiss her and "well ... go further". He said that he had resisted going down the kissing track but had left the door open for Ms MacGregor if she needed that, even though it would be infrequent and that there would still be boundaries. Notwithstanding that Mr Craig was a married man, his proposition was that he and Ms MacGregor would have an intimate physical relationship. Moreover, in his letter of 24 December 2013, Mr Craig emphasised that nothing had changed about the way he felt about her, meaning that he still hoped for some intimacy with her of the kind which had occurred on election night in 2011. I accept Ms MacGregor's evidence that she interpreted Mr Craig's implied reference in that letter to her "perfect" breasts to be a reminder of the intimate touching in which they engaged on that occasion. I am satisfied, therefore, that the imputation that he begged her for an affair was true in its material respects.

### *Did Mr Craig put financial pressure on Ms MacGregor to get her to sleep with him?*

[502] The imputation that Mr Craig placed Ms MacGregor under financial pressure to sleep with him is more problematic. Although Ms MacGregor said in evidence that she considered Mr Craig had put financial pressure on her to sleep with him, she withdrew from that position saying that it was a possibility and that she did not really

know why he had placed her under financial pressure. Ms MacGregor was somewhat vague how Mr Craig had placed her under financial pressure. Predominantly, she referred to Mr Craig's refusal to agree with the hourly rate she should be paid during the 2014 campaign period.

[503] I accept that Ms MacGregor became extremely agitated about the hourly rate. I am also satisfied, however, that she received Mr Craig's proposal in a memorandum dated 10 August 2012 that if she ceased to be an employee of Centurion and reverted to the status of a contractor she would be paid \$60 an hour for the non-campaign period and \$70 an hour for the campaign period. Following receipt of that proposal, an email dated 4 September 2012 from Mr Craig to Ms MacGregor confirmed that she had negotiated an increase in the non-campaign rate to \$65 an hour. That was reflected in a memorandum dated 28 September 2012 which Mr Craig sent to Leesa Fraser of Centurion. In it, he confirmed that Ms MacGregor had agreed to cease to be an employee on 26 October 2012 and that, from 27 October 2012, as a contractor, she would be paid \$65 an hour for the non-campaign period and \$70 an hour for the campaign period. That memorandum notes that it was being copied to Ms MacGregor and I consider that probably occurred.

[504] I am also satisfied on the evidence that the reason Centurion did not pay Ms MacGregor regularly during the four or five months prior to her resignation was that she did not render invoices. By that stage, Mr Craig was placing her under considerable pressure to work long hours. I accept the evidence of Ms Storr and Ms Adair-Beets that Ms MacGregor appeared to be out of her depth in some aspects of the work with the result that it was necessary for each of them to take over part of her duties. It was in that context that Ms MacGregor and Mr Craig disagreed about the appropriateness of accommodation arrangements from time to time and about Mr Craig's expectations as to the travel arrangements, both as to the mode of transport and the timing of it.

[505] Mr Craig did not exploit Ms MacGregor's failure or refusal to render invoices for her fees. He authorised two \$10,000 payments to Ms MacGregor on account of her fees on the basis that she would be expected to consult her time sheets and render invoices in due course. It is telling that, even after she resigned on 18 September 2014,

it took Ms MacGregor until 29 January 2015 to submit the invoices supporting her claim that she had been underpaid.

[506] I accept that the terms of the loan of \$18,990.59 agreed between Mr and Mrs Craig and Ms MacGregor in February 2014 had the potential to operate as a constraint on Ms MacGregor's resigning from her employment as Mr Craig's press secretary. The terms entitled Mr Craig to withhold up to 60 per cent of any payment for contract services performed by Ms MacGregor as repayments of the loan. Moreover, the loan was repayable on demand and Ms MacGregor would have only three weeks to arrange repayment. While there was no express provision requiring repayment of the loan if Ms MacGregor ceased to be a contractor, Mr Craig was entitled to require repayment on demand when Ms MacGregor resigned. The loan terms were arguably more favourable to Ms MacGregor than the terms of her credit card debt, in that she was not required to pay any interest for the first six months and then interest at only four per cent per annum compared to a credit card interest rate. After 12 months, the interest rate increased to an undisclosed lenders' unsecured overdraft rate plus 2 per cent. The default interest rate was the unsecured overdraft rate plus 10 per cent.

[507] In fact, however, Ms MacGregor acknowledged that she paid on no attention to the loan interest rates and was not aware of the implications of the terms until after she had resigned and they were explained to her. Moreover, there is no evidence that Mr Craig made any reference to Ms MacGregor's obligation to pay interest after August 2014. There was no requirement in the loan agreement for repayments of principal, the incentive to reduce the debt coming from the accelerating interest rate.

[508] At the time Mr and Mrs Craig advanced the money to Ms MacGregor, Mr Craig undertook an analysis of her income and expenditure which demonstrated that she was living beyond her means, evidence of which was provided by the credit card debt which was extinguished when she received the loan. I infer from the evidence as a whole that Ms MacGregor was a poor financial manager. I consider it to be probable that, once she was relieved of the pressure to pay credit card interest on nearly \$20,000 when Mr and Mrs Craig paid off the debt on her behalf, Ms MacGregor gave no thought to any burden of repayment of the advance. There is no evidence that

Mr Craig put Ms MacGregor under any financial pressure either by making demands connected to the loan or by withholding contract payments from her; such financial pressure as Ms MacGregor may have been under during 2014 was largely self-imposed.

[509] Nor is there any evidence that Mr Craig exploited Ms MacGregor's financial difficulties in order to obtain any kind of sexual favour from her. Apart from Ms MacGregor's uncorroborated evidence that Mr Craig sent her "horrible" text messages, the evidence of which she claimed he had subsequently destroyed or simply refused to disclose, there was no evidence that Mr Craig wrote any letters in 2014 of the kind which I have held he wrote in 2011, 2012 and 2013 which amounted to sexual harassment.

[510] The immediate catalyst for Ms MacGregor's resignation was her failure to persuade Mr Craig to engage with her on what I am satisfied was a demand that, notwithstanding the agreement that she would be paid \$70 an hour during the 2014 campaign period, she should be paid at a higher rate. Contractually, it seems to be clear that Mr Craig was entitled to refuse to pay the higher rate. I am satisfied that, by the start of the 2014 campaign, Mr Craig had no intention of paying Ms MacGregor at a higher rate, if only because, as he said in evidence, agreeing to Ms MacGregor's demands would have resulted in her being paid at a higher rate than the Party's chief executive, Ms Rankin. Mr Craig's repeated deferment of the discussion about the pay rate, however, was manipulative in that he left open the possibility that he might be persuaded to increase the rate, rather than simply telling Ms MacGregor that he would not agree to paying her more than the \$70 hourly rate that had been agreed.

[511] Ms MacGregor explained that it only became clear to her how "trapped" she was in the work relationship with Mr Craig after it was over. As she put it, the chains Mr Craig had over her only became visible to her as time went on. She said that she had come to realise that Mr Craig was doing his best to manipulate her at the time so that it actually took a while to unravel all that manipulation and figure out what was actually going on. The evidence falls well short, however, of persuading me that Mr Craig put Ms MacGregor under financial pressure to sleep with him. That imputation is neither true nor materially true.

### **Defence of responsible communication on a matter of public interest**

[512] Because I have found that the imputed statement that Mr Craig had placed Ms MacGregor under financial pressure to sleep with him was an untrue defamatory statement of fact, it is necessary to consider whether the defendants should succeed in their defence on the grounds that the statement was a responsible communication on a matter of public interest.

[513] I have already held, and it has not been disputed, that the matter to which Publication 4 was directed was a matter of public interest. The remaining issue, therefore, is whether the defendants acted responsibly in publishing the statement.

[514] Mr Slater may have drawn an inference that Mr Craig placed Ms MacGregor under financial pressure to force her to sleep with him from the information he received from Mr Williams that Ms MacGregor had not been paid for several months before her resignation and that she had to make claims to recover money she was owed from Mr Craig. Mr Slater was aware that Mr Craig had asserted the financial settlement he made with Ms MacGregor in May was a pay-related issue. But I was not referred to any evidential basis for the view that Mr Craig was motivated as alleged, and it is clear that Mr Slater made no enquiry of Ms MacGregor, Mr Williams or Mr Craig before making the assertion he did. In the circumstances, Mr Slater cannot have had a genuine belief in the truth of the statement when he made it. That was reckless and irresponsible and the public interest defence fails in respect of that imputation accordingly. I address the question of a remedy for that defamation below.

### **Fifth cause of action – Publication 6 – Whaleoil – 20 June 2015, 4.30 pm**

[515] A post by Mr Slater on the Whaleoil site at 4.30 pm on 20 June 2015 alleged that members of the Conservative Party board had decided to confront publicly "the untruths of Colin Craig". He said that Mr Craig had only himself to blame "for constantly covering up and misleading the board about his actions." He then quoted Mr Stringer as saying earlier that morning that Mr Craig's denial that any board members had raised concerns about his relationship with Ms MacGregor or accused him of being dishonest was "completely untrue, because the board has discussed this almost monthly for nearly a year."

[516] Mr Slater added the following comments:

Worse than untrue, a deliberate lie. Craig has also misled the board over the amount of the settlement and the nature of the settlement. He has told the board one amount that is many tens of thousands of dollars away from the real settlement amount ... Having a chaperone, which I am told was at the request of Rachel MacGregor, just provides even more evidence of the creepy behaviour of Colin Craig.

...

If this carries on much more I predict death by a thousand cuts as TXT, SXTS and more musings from "Creative Colin" make their way into the public view.

[517] Again, publication by the defendants is not disputed. The meanings pleaded are that Mr Craig:

- (a) sexually harassed Ms MacGregor;
- (b) sexually harassed her so seriously that he settled her sexual harassment claim by paying her a large sum being "many tens of thousands of dollars" more than what he had told the board of the Conservative Party he paid her;
- (c) lied to the board of the Conservative Party to cover up a large gap of "many tens of thousands" between what he actually paid Ms MacGregor and what he told the board he had paid to settle employment related matters;
- (d) sent Ms MacGregor numerous sexually explicit text messages, which were unsolicited and a form of sexual harassment;
- (e) engaged in behaviour with Ms MacGregor which was so morally reprehensible that the board of the Conservative Party had to put chaperones in place to protect her; and
- (f) lied to the board of the Conservative Party for about a year by denying that he was sexual harassing Ms MacGregor.



[518] I am satisfied that the passages on which Mr Craig relies for this cause of action largely replicate in their imputations the statements made in Publication 1. For the reasons discussed in regard to the first cause of action, therefore, I am satisfied that the pleaded imputations arise from the statement and that the meanings are defamatory of Mr Craig. I am also satisfied that the pleaded statements were not expressions of opinion but either statements of fact or assertions based on assumptions of fact. The defence of honest opinion is not available. I turn next to consider the defence of truth.

### **Defence of truth**

[519] As I have observed, the pleaded imputations replicate those pleaded in connection with Publication 1, with the exception of the allegation that chaperones were put in place because of Mr Craig's behaviour. I address that imputation below.

[520] For the reasons given in relation to Publication 1, I find:

- (a) The imputation that Mr Craig sexually harassed Ms MacGregor is true.
- (b) The imputation that he sexually harassed her so seriously that he settled her sexual harassment claim by paying her a large sum of money many tens of thousands of dollars more than what he had told the board of the Conservative Party he paid her, was materially true in substance. Mr Craig provided Ms MacGregor with a substantial financial benefit in exchange for her not pursuing a justifiable claim that Mr Craig had been guilty of moderately serious sexual harassment and misled the board intentionally about the true nature of his behaviour with and towards Ms MacGregor, the foundation and merits of Ms MacGregor's allegations against him, and the true nature of the settlement with her.
- (c) The imputation that Mr Craig sent Ms MacGregor numerous sexually explicit text messages, which were unsolicited and a form of sexual harassment is materially true in substance, in that he sexually harassed Ms MacGregor by communicating to her sexually oriented written messages that were unwelcome.

- (d) That he lied to the board of the Conservative Party for about a year by denying that he was sexually harassing Ms MacGregor is materially true in substance, in that, while his deception of the board may not have lasted over a year, he falsely denied the allegations put to him from time to time by various board members about the nature of his relationship with Ms MacGregor and about actions which, I have found, amounted to moderately serious sexual harassment.

[521] The allegation that Mr Craig had engaged in behaviour with Ms MacGregor which was so morally reprehensible that the board of the Conservative Party had to put chaperones in place to protect her was based on an allegation made by Mr Stringer in an interview with a journalist, Lisa Owen, on a TV3 television programme *The Nation*, on the morning of 20 June 2015. In the interview, Mr Stringer mentioned rumours swirling around Mr Craig about his relationship with Ms MacGregor and widespread concerns in the Party about the "awkwardness" of the relationship between Mr Craig and Ms MacGregor. Mr Stringer agreed with Ms Owen that there was no evidence of a sexual relationship, but said that one of the accusations referred to sexual harassment, although he acknowledged that he did not have any evidence of that himself. This exchange occurred:

Lisa Owen: But just to be clear, you were so concerned about this relationship and what might be going on that the Party instituted some kind of chaperone, didn't you?

John Stringer: Yes, we put a chaperone system in place just to help avert some of the perception that people had that this was untoward and was unwise. We are not suggesting that anything went on physically between these two people, we don't have evidence of that. However, it has now transpired this was an inappropriate relationship.

[522] Mr Stringer may have been referring to the increased involvement of Ms Storr and Ms Adair-Beets in Ms MacGregor's areas of responsibility. Neither of those witnesses said they were asked to act as chaperones. Although Mr Henry opened the case for the defendants by saying that Ms Rankin would give evidence, she did not do so and Mr Stringer was not called as a witness. There was no evidence, therefore, from any witness supporting the proposition that a chaperone system was adopted because of concerns about Mr Craig's relationship with Ms MacGregor.

Ms MacGregor did not make that allegation. The imputation to that effect, therefore, was not true and was not materially true in substance.

### **Defence of responsible communication on a matter of public interest**

[523] I find that the defendants are entitled to rely on the public interest defence to this cause of action, despite finding that the allegation about the chaperone is an untrue statement of fact which was defamatory of Mr Craig. I have held that Mr Slater possessed sufficient information to entitle him to responsibly make public allegations about Mr Craig sexually harassing Ms MacGregor; sending her sexually oriented written messages that were unwelcome; providing her with a substantial financial benefit in exchange for her not pursuing a justifiable claim that he had sexually harassed her, and misleading the board intentionally about the nature of his behaviour with and towards Ms MacGregor and the foundation and merits of her allegations against him. Mr Slater was entitled to rely on an allegation made during an interview carried on a breakfast television programme between an experienced journalist and a member of the Conservative Party board, Mr Stringer, containing a statement that a chaperone system had been put in place. I hold that view notwithstanding that Mr Slater knew about Mr Stringer's animosity towards Mr Craig. Moreover, the publication in Whaleoil included extracts from a report by the New Zealand Herald quoting from Ms Owen's interview of Mr Stringer on *The Nation*, in which the Herald reported that chaperones had been appointed to Mr Craig to try and shift public perceptions of him. Mr Slater argued, and I accept, that it was not irresponsible of him to assume that the New Zealand Herald considered the information to be reliable.

[524] I find in the circumstances that it was not irresponsible of Mr Slater and Whaleoil to re-publish statements made by Mr Stringer to an established television broadcaster which had been quoted in a leading New Zealand newspaper. Both media organisations are bound by journalistic standards requiring accuracy, fairness and balance. For those reasons, notwithstanding that I have held the statement of fact about the chaperones to be false and defamatory of Mr Craig, the public interest defence succeeds.

**Sixth cause of action – Publication 7 – Whaleoil – 21 June 2015, 8.30 am**

[525] At 8.30 am on 21 June 2015, Mr Slater posted a blog headed "EXCLUSIVE: EMAILS REVEAL CONSERVATIVE PARTY MELTDOWN". He quoted directly from emails sent by Mr Stringer, Mr Craig and Mr Day to members of the board, and from an email sent by Mr Day to Whaleoil. The blog post included statements in one of Mr Stringer's emails as follows:

I am disappointed half of us were missing tonight from the special meeting called to discuss these matters "(that are of some years standing)". We had documentary evidence in the form of hand written notes, letters signed by Colin, his SXTs and emails for you to see, and I wanted to hear Colin's side of the story.

..

I have ... spoken to the media tonight to protect my own reputation and that of the Party from a man who is morally bankrupt and has lied to us as a Board for months and months.

The explicit and salacious details of Colin's indiscretions with women other than his wife will be leaked out every day over the next several days by several media outlets and from numerous sources. His large payout to one victim is already being discussed.

... Let the cards fall where they may. But Colin's tenure as a leader of anything political is over as his victims begin to speak out.

[526] Mr Craig pleads that in their natural and ordinary meaning the statements relied upon conveyed the meanings that Mr Craig:

- (a) sexually harassed Ms MacGregor, in a very serious manner, for well over a year;
- (b) sexually harassed other women in a similar, serious, manner;
- (c) by means of that sexual harassment and similar sexual harassment of other female "victims" cheated on his wife, Helen;
- (d) as a reflection of the seriousness of his actions settled Ms MacGregor's sexual harassment claim with a "large payout" of many tens of thousands amounting to or being approximately a six-figure sum;

- (e) sent Ms MacGregor sexually explicit text messages which were numerous, unsolicited and unwanted; and
- (f) lied to the board of the Conservative Party for months and months or years by denying that he was sexually harassing Ms MacGregor.

[527] It is unnecessary to subject this claim to detailed scrutiny. The blog post on which the claim is based comprises principally direct quotes from exchanges of emails by Mr Stringer to the board of which Mr Craig was one of the recipients, by Mr Craig to the board in response, by Mr Stringer responding to Mr Craig's reply and an email from Mr Lawrence Day to Whaleoil received at around the same time. The post includes comments by Mr Slater, none of which are relied upon in this cause of action.

[528] The allegations of serious sexual harassment of Ms MacGregor by Mr Craig resulting in a large payout to her; of sexually explicit text messages; and of lies told by Mr Craig to the board about these matters have previously been addressed in dealing with the preceding causes of action. I have held those allegations to be true or materially true in substance. I have held further that, had those statements or any of them been proved to be untrue, Mr Slater would have been entitled to rely on the public interest defence on the basis that publishing the allegations amounted to responsible communications. It follows that, to the extent that the cause of action is founded on those imputations, it must fail.

[529] One of the alleged imputations has not previously been addressed; namely, that Mr Craig had committed indiscretions with "women" other than his wife, and that there was more than one victim of sexual harassment. That statement of fact was neither true nor substantially true, bringing the defendants' reliance on the public interest defence into play.

### **Defence of responsible communication on a matter of public interest**

[530] It is significant that Publication 7 included in full Mr Stringer's email containing the allegations on which Mr Craig relies; a full quotation of Mr Craig's email in reply and the full content of Mr Stringer's response. Reproducing those documents in full in addressing a matter of public interest represents a fair and

balanced approach by the defendants. Moreover, it is significant that in his reply to Mr Stringer's first email, Mr Craig did not even address the imputations he now pleads as being carried by Mr Stringer's allegations, let alone deny them. Instead, his response deals with matters of process concerning his stepping down so that the Party could "investigate the matter/allegations". Mr Craig said in his response, as quoted in the blog post, that he would "only address evidenced allegations not rumours or speculations." In the email, Mr Craig said he was lodging a formal complaint that Mr Stringer had breached the Party's media policy by speaking to news media on a Party matter without permission.

[531] The email sent by Mr Stringer responding to Mr Craig's reply rejects Mr Craig's suggestion that he did not know what accusations were being made and addresses the issue of whether Mr Craig had resigned from the leadership the previous day or was only stepping down temporarily. Mr Day's email to Whaleoil addresses that issue by indicating that it was he who had "personally talked Colin into resigning for the good of the Party". It indicated that Mr Day had not seen the information Mr Slater had claimed to possess and indicating that there was no appetite from any board member that Mr Day was aware of to recall Mr Craig to the leadership of the Party. Mr Slater's comments on the exchanges addresses not only the conflict between Mr Stringer and Mr Craig about Mr Craig's knowledge of the source of the allegations, but also the state of dysfunction on the Conservative Party board. He observed that Mr Craig appeared to be dictating the terms of his "stand down" and the review process, and commented that it was clear that Mr Craig considered he had merely stood down pending the review.

[532] There is no doubt that, taken as a whole, the post was a legitimate report of apparently dysfunctional behaviour by members of the Conservative Party board, characterised by an attack on Mr Craig by another board member and Mr Craig's refusal or failure to take advantage of an opportunity to respond to the allegations of sexual harassment and his making a large payout to Ms MacGregor. It addressed a legitimate political issue of public interest, namely, whether Mr Craig had resigned permanently from his post as leader or whether he was merely temporarily standing down with a view to returning to the position after the board had reviewed matters.

[533] Taking account of the circumstances of that publication, it follows that the public interest defence must succeed in defeating the claim based on the allegation on that occasion that there was more than one victim of Mr Craig's sexual harassment.

**Seventh cause of action – Publication 9 – Whaleoil – 23 June 2015, 10.00 am**

[534] On the afternoon of 22 June 2015, Mr and Mrs Craig held a media conference at which they both read prepared statements. Mr Craig then answered questions. A full account of the conference is given at [284] – [288]. Mr Craig said he intended to set the record straight on "the wild speculations and allegations" being made about his dealings with Ms MacGregor. He said he had paid Ms MacGregor \$16,000 as the balance of her agreed payment for services rendered in 2014, some of which had been paid in advance, and that Mrs Craig and he had agreed "on compassionate grounds" to forgo repayment of a loan to Ms MacGregor of just under \$20,000 on which she had defaulted. Mr Craig referred to "wild and inaccurate speculation about a sexual harassment claim that may have been made against" him and said that, in hindsight, on some occasions his and Ms MacGregor's conduct was inappropriate and that they had acknowledged that. Mr Craig said he wished to make it very clear that he had never sexually harassed anyone and any allegations to the contrary were wrong.

[535] Mrs Craig said that she had chosen to stand by her husband, believing he had been falsely accused, adding that the media speculation "related to allegations already withdrawn." When pressed to give more detail about how far Ms MacGregor's complaint went, Mr Craig would not say what was inappropriate about his conduct because it was a private matter. He confirmed that the only way he would consider putting his hand forward for leader of the Conservative Party again was if the grass roots membership overwhelmingly supported that.

[536] On the day after Mr and Mrs Craig's media conference, Mr Slater published a further blog post which reportedly repeated a statement made by Mr Stringer, including the following:

What was yesterday "baseless and defamatory allegations" for which I was threatened with lawsuits, has now been admitted. This confirms Colin Craig has lied to the Board repeatedly over several months when

specifically asked if anything was sexual or inappropriate. He has always strenuously denied any impropriety.

... There remains confusion over what was paid and for what.

\$16,000; or 36,000; or approx, \$50,000; or a six figure payment paid as one lump sum.

[537] Mr Craig pleads that the effect of the statements made in this publication is to repeat the allegations that he sexually harassed Ms MacGregor in a serious manner; that he had paid her a large or six figure sum to settle the harassment claim; that he had lied to the board over several months about denying the sexual harassment allegations and that he had been dishonest or deliberately unclear about the actual amount that had been paid to Ms MacGregor to settle her invoicing dispute.

[538] This claim must fail, however, for the reasons given in relation to the first cause of action in which similar matters were pleaded.

#### **Eighth cause of action – Publication 10 – Whaleoil – 26 June 2015, 12.30 pm**

##### **Mr Slater's discussions with Ms Flannagan**

[539] At [293] – [298], I recount an approach made to Mr Slater on 24 June 2015 by Ms Madeleine Flannagan, a barrister who was acting for Mr and Mrs Craig in an adoption matter. Ms Flannagan called Mr Slater and asked him what further information about Mr Craig he had and whether he could get her a copy of Ms MacGregor's dossier of material or put her in touch with someone who could. She told Mr Slater that she was asking about the dossier for a client as it might impact on the matter she was dealing with in which Mr Craig was a factor. The interaction between Ms Flannagan and Mr Slater led Mr Slater to draw an inference that Ms Flannagan was acting for a second sexual harassment victim of Mr Craig. Ms Flannagan said she had tried to disabuse Mr Slater of that view.

[540] In April 2016, Mr Slater sent Ms Flannagan a private Facebook message saying that he needed to have a chat with her about Mr Craig but that she replied saying he was asking about a privileged matter which she was unable to discuss.



[541] In October 2016, Ms Flannagan contacted Mr Slater over another matter and they had several telephone and email conversations over a period of a few weeks. Towards the end of their dealings on the issue, Mr Slater referred to Mr Craig, the defamation proceedings between them and the discussions he had had with Ms Flannagan in June 2015. Mr Slater said he thought Ms Flannagan had access to information that could help him in the defamation proceedings. She said he readily acknowledged her response when she told him that the matter was privileged, but said that his lawyer would be in touch.

[542] Ms Flannagan said she told Mr Slater that there was little point in that because her cases and information about her clients were privileged. She said she reminded Mr Slater of her earlier advice that the case she was acting in, when she first contacted him, was not of the nature he thought it was; it was different. She said she told Mr Slater she had never said there was another victim and pointed out that she had tried to tell him that at the time. Ms Flannagan said Mr Slater's reply was to the effect that it did not matter as he could use what he took from their initial conversations to show that he had a reasonably held belief that there was another victim.

[543] Ms Flannagan said that on 3 May 2017, shortly before the trial of this proceeding began, she was contacted by Mr Slater and they spoke about the defamation proceedings. Mr Slater told her that he was preparing an affidavit which was to be confidential to the Court concerning the fact that she was a confidential source of information on which he had relied in making a statement or statements which were the subject to the proceeding. Mr Slater told her that he had written in his affidavit that she would not tell him who the client was or what the case was about but that he had taken it from what she had said that she was acting for another victim. He told her he had stressed that to the Court and that she had acted properly as any lawyer acting for a client should. Ms Flannagan said that, in respect of the claim that there was a further victim, she reminded Mr Slater that she had said that her case was not what he thought it was, it was quite different and that she had not said anything about a victim. Ms Flannagan said Mr Slater acknowledged that this was so but said it did not matter as the conversation she had with him gave him grounds for a "reasonable belief" that she was acting for one because of how he had originally interpreted her

initial comments. He told Ms Flannagan that he was aware of four other "victims" of Mr Craig but did not elaborate further.

[544] Mr Slater said that when he received the first telephone call from Ms Flannagan, in June 2015, she emphasised that their conversation was to be kept confidential. He said that Ms Flannagan asked for the contact details for Ms MacGregor's lawyer. When he asked why, Ms Flannagan said she could not tell him the full details due to client privilege. Mr Slater said in his written brief of evidence that Ms Flannagan told him that she had a client who was another one of Mr Craig's victims. Mr Slater was cross-examined on this point by Mr Craig and I asked him some questions about it. Mr Slater clarified for me that Ms Flannagan had not told him directly that she was acting for "another of Mr Craig's victims." He admitted frankly that he had inferred that from:

- (a) the fact that she was making an enquiry of him about what information he had about Mr Craig;
- (b) the request for contact details for Ms MacGregor's lawyer;
- (c) Ms Flannagan's specific interest in documents relating to Ms MacGregor whom Mr Slater knew had been involved in making a sexual harassment complaint about Mr Craig to the Human Rights Commission; and
- (d) his knowledge that Ms Flannagan was a lawyer who worked in the areas of family law and harassment.

[545] Mr Slater denied that Ms Flannagan had tried to impress on him that the inference of another victim that he was apparently drawing from their conversation was not a proper inference. Mr Slater said he did not assume that Ms Flannagan's client was a victim of sexual harassment and that his reference to "another victim" had a different context.

[546] Mr Slater also said in his brief of evidence that Ms Flannagan had told him, when he approached her to see if her client would give evidence in this proceeding, "that her client was too scared to become involved" and that she was not authorised to take the matter any further. Mr Slater accepted during the hearing, however, that he had inferred that that was the view of Ms Flannagan's client and that she had not said as much. It is clear, nevertheless, that Mr Slater felt he had been misled by Ms Flannagan, believing she had betrayed their friendship by not telling him at the outset that she was acting for Mr Craig when she made her first approach to him.

[547] Mr Slater did not agree that, in the context of his continued investigation into allegations of sexual harassment of Ms MacGregor by Mr Craig, references he made in his blog posts to there being "another victim" could only mean another victim of sexual harassment. He accepted that it was a reasonable inference but that that was not his intention. Mr Slater said that it was only when a copy of Ms Flannagan's brief of evidence for this proceeding was made available to him shortly before the trial began that he became aware that Mr Craig was her client and said he was "flabbergasted". He said that he did not believe that a friend who is a barrister would omit that information.

[548] Ms Flannagan was adamant that she had never said that her client was a victim of Mr Craig. She was unable to comment on what Mr Slater said he had inferred from his knowledge of her areas of legal practice, but said that she did not intend for him to draw the inference that she was acting for "another" victim and tried to disabuse him of it many times. Ms Flannagan said that, because Mr Craig was her client, she would never have said or implied that her client was scared of Mr Craig.

### **Publication 10**

[549] On the basis of his conversations with Ms Flannagan on 24 and 25 June 2015, Mr Slater made a further post on Whaleoil at 12.30 pm on 26 June 2015, headed "THE DELUSIONS OF SMALL PARTIES AND THE STUPIDITY OF THE MEDIA". In it, Mr Slater described Mr Craig as "a weirdo and political spastic" and said:

The thing is he admitted to "inappropriate behaviour" and most people now know what that is ... and he won't survive it when it finally comes out.

I also happen to know that there is at least one other victim out there with similar circumstances ... so Colin Craig is just a ticking timebomb.

Guys like this never have just one victim no matter how hard they try to keep everyone silent.

... The bottom line is no one brought down Colin Craig other than himself through his extremely poor and disgusting behaviour towards women.

[550] Mr Craig alleges that the meanings of these statements are that he:

- (a) sexually harassed Ms MacGregor in a serious manner;
- (b) seriously sexually harassed another woman;
- (c) behaved in an extremely poor and sexually disgusting way towards women; and
- (d) is a danger to women.

[551] I am not persuaded that the publication relied upon carries the imputation that Mr Craig is a danger to women. The sting in the publication is a statement of fact that Mr Craig seriously sexually harassed at least one victim other than Ms MacGregor. The piece then carries the opinion that men guilty of sexual harassment never have only one victim and that it was Mr Craig's extremely poor and "disgusting behaviour" towards women that led to his political demise. The assertion that there was "at least one other victim" was reinforced by Mr Slater telling his readers what he happened to know about the existence of a second victim, rather than expressing an opinion on the basis of verifiable facts. The defence of honest opinion is not available.

### **Defence of responsible communication on a matter of public interest**

[552] Although it had been pleaded, Mr Henry said in his closing submissions that Mr Slater properly conceded that the defence of truth could not succeed. Mr Henry's submission was that although the assertion of a second victim was not true, it was reasonable of Mr Slater to make the allegation in the circumstances because he had reasonable grounds for genuinely believing there was another victim based on his conversations with Ms Flanagan. In advancing what amounts to the public interest

defence on the basis that Mr Slater acted responsibly, Mr Henry submitted that Mr Slater was entitled to rely not only on his conversations with Ms Flannagan but what he knew from other sources, including Mr Stringer, about allegations that there were other victims of Mr Craig's sexual harassment. Counsel reminded me that Mr Slater accepted that Ms Flannagan did not say that she was acting for another victim and that the view that he genuinely held was based on inference.

[553] Mr Henry's principal submission was that Ms Flannagan's approach to Mr Slater was just a clever ploy by Mr Craig and Ms Flannagan to deceive Mr Slater into the false belief that Ms Flannagan was acting for a second victim. He said it was not credible that Ms Flannagan had been instructed to make an enquiry for further information that might be made public by Ms MacGregor because by the time Ms Flannagan approached Mr Slater on 24 June 2015, Mr Craig knew what documents had been leaked and, of course, he was well aware of the letters he had sent to Ms MacGregor and of the details of her complaint to the Human Rights Commission. By 21 June, Mr Craig had known what information had been passed on to the board. Mr Henry submitted that while Ms Flannagan may well have been told that she should look for information that might be leaked, because that information was false, Mr Craig knew that the allegations which had been made were true and knew what he had done. Consequently, he did not need Ms Flannagan's enquiries to inform him what might be made public.

[554] I am unable to accept Mr Henry's proposition about a deliberate deception, however, because I accept Ms Flannagan's evidence that it was she who initiated the enquiry. Ms Flannagan explained that she was concerned about the effect of further adverse publicity on Mr and Mrs Craig's adoption application and it was she who suggested an approach to Mr Slater, whom she knew, seeking further information. It is clear that Mr Craig did not admit to Ms Flannagan or, I infer, to his wife the true nature of his relationship with Ms MacGregor and what damaging material was likely to have been in her possession. Ms Flannagan's suggestion to him was reasonable and, if he wished to keep the truth about his relationship with Ms MacGregor hidden from his wife and his lawyer, he had little option but to agree with her proposal. Moreover, the approach to Mr Slater might have revealed how much information Ms MacGregor had passed on to Mr Slater.

[555] Mr Henry argued that there was no reason why Ms Flannagan could not have been instructed to tell Mr Slater the identity of her client. Providing Mr Slater with that information, however, would have been highly unlikely to result in his revealing anything of what he knew, or from whom, and might have been expected to result in further denigrating public comments about Mr Craig by Mr Slater.

[556] I found Ms Flannagan to be a reliable and credible witness whose evidence was supported by both her file notes and the plausibility of her claims. Mr Craig also supported her account of how the approach to Mr Slater came about. I accept that Ms Flannagan warned Mr Slater, when she realised he thought she was acting for another victim of sexual harassment by Mr Craig, that the matter she was involved with was not what he was thinking. Moreover, I accept that when Ms Flannagan reminded Mr Slater during their conversations in 2016 that she had never said that there was a second victim and tried to impress that on him, he responded that that did not matter because he was able to rely on having had a reasonable belief in the second victim because of what he inferred from her initial approach to him.

[557] I reject Mr Slater's evidence that he did not intend the reference to another victim to refer to a victim of sexual harassment. I reach that conclusion because it flows naturally from the context of the conversations between Mr Slater and Ms Flannagan, even though I accept that there was another, separate and different, matter of which Mr Slater was aware that might also have occurred to him. The context of the discussions between Ms Flannagan and him, as Ms Flannagan explains it, was clearly focused on the allegations of sexual harassment.

[558] While I accept that Mr Slater may have had a suspicion about a second victim, based both on Mr Stringer's allegations that there was another victim and on the initial inference he drew from Ms Flannagan's approach to him, I do not characterise it as a genuine belief. In any event, it was not reasonable or responsible of him to publish the allegation on that occasion without seeking verification from a reasonably reliable source. At the time of Publication 10, Mr Slater did not merely quote a report in the New Zealand Herald as he had done earlier. He said:

I also happen to know that there is at least one other victim out there with similar circumstances....

[559] Depending on the outcome of a reasonable inquiry, it may have been reasonable to expect him to seek Mr Craig's comment. The media attention up to that point had been focused on Mr Craig's relationship with Ms MacGregor, not on allegations that he behaved badly towards women generally or that Ms MacGregor was not the only person to have complained about his behaviour. It was Mr Slater's assumption that there must be other victims which led him to publish the allegation on 26 June 2015 that there was at least one other victim out there. Doing so in those circumstances was reckless.

[560] The public interest defence to the eighth cause of action fails accordingly. I find it to be proved that the defendants defamed Mr Craig on 26 June 2015 by asserting publicly that he seriously sexually harassed a woman other than Ms MacGregor. It will be necessary to consider what remedy should be granted to Mr Craig.

**Ninth cause of action – Publication 11 – Whaleoil – 28 June 2015, 10.30 am**

[561] At 10.30 am on 28 June 2015, in a post entitled "IT'S ALL 'BOUT THE MONEY, DUM DUM", Mr Slater referred to Mrs Craig's support of her husband but commented, "I bet she won't be so forgiving when the Sext bombs start dropping". This is pleaded as defamatory Publication 11. Mr Craig alleges that the imputation from Mr Slater's reference to the dropping of sext bombs was that Mr Craig had sent sexually explicit "sext" messages that were unsolicited, unwanted and so shocking they would have an explosive effect both on Mr Craig publicly and on his marriage.

[562] This cause of action may be disposed of briefly. The publication carries the implication, when read in the context of the public controversy about Mr Craig's conduct with Ms MacGregor and Mr Slater's previous statements about it, that Mr Craig had sent sexually explicit text messages to Ms MacGregor. I am not satisfied, however, that it carries the imputation that the sexually explicit messages were so shocking that they would have an explosive effect both on Mr Craig publicly and on his marriage. I am satisfied that the imputation available amounted to a statement of fact but that it was materially true in substance so that the defendants' defence of truth succeeds.

**Tenth cause of action – Publication 12 – Whaleoil – 28 June 2015, 1.00 pm**

[563] Later that day, at 1.00 pm, Mr Slater published a blog post, "SEX SCANDAL WITHOUT THE SEX". He said, quoting a former member of Parliament, Mr Rodney Hide, that Mr Craig may well have achieved some considerable power had Ms MacGregor not resigned two days out from the 2014 election declaring him "a very manipulative man". Mr Hide was quoted as saying that that comment from a young woman who was working closely with Mr Craig and supporting him caused many Conservative voters to rethink their vote. Mr Slater commented:

There are rumours swirling around that because Craig won't take "no" for an answer, and he is essentially re-victimising MacGregor, a second wave of revelations are heading our way.... We are only just getting to know the one who misuses his power over subordinates to try and sleep with them.

[564] Mr Craig claims that, in addition to assertions that he sexually harassed and victimised Ms MacGregor and another woman, the statements amount to allegations that Mr Craig misused his position as leader of the Conservative Party, or as a business leader, to put pressure on Ms MacGregor and other subordinates to sleep with him.

[565] This cause of action also needs only brief discussion. I accept that it is an available inference from the publication that Mr Slater indicated to his readers that further allegations of sexual harassment against a person or persons other than Ms MacGregor might be imminent and that the circumstances of Mr Craig's sexual harassment of Ms MacGregor amounted to an abuse of power in his position as leader of the Conservative Party. As my findings in respect of Publication 1 make clear, I am satisfied that Mr Craig did abuse his position in sexually harassing Ms MacGregor and that the harassment was moderately serious. I have held also that there was no foundation for Mr Slater's assertion that Mr Craig had sexually harassed any person other than Ms MacGregor. I accept, therefore, that the publication would be understood by an informed reader to amount to a further expression of the defamatory statement on which the eighth cause of action was founded. This claim succeeds. I am not persuaded, however, that the re-publication only two days after the original statement would have added anything to such damage as Mr Craig's reputation may have suffered from the earlier allegation of there being a second victim. That finding



will be relevant to the question of what remedy, if any, should be granted to Mr Craig for the defamation.

**Eleventh cause of action – Publication 14 – Whaleoil – 1 July 2015, 4.00 pm**

[566] By 24 June 2015, all members of the Conservative Party board, apart from Mr Dobbs, Mr Day and Mr Stringer, had resigned. Mr Stringer apparently circulated an email to Conservative Party members and others. Mr and Mrs Craig sent a letter to members of the Conservative Party in which they said they wished to update the members on recent developments. In the letter, they assured members that it was not the case that Mr Craig has sexually harassed a staff member and that the allegations were false and had been withdrawn. They said that while there was no harassment and no sexual relationship there were some occasions where the conduct of Mr Craig and the staff member was inappropriate, which had been acknowledged from both sides so that all parties could move on. Enclosed with each letter were copies of the media statements made by Mr and Mrs Craig on 22 June 2015 and a free-post response form which members were invited to complete. It asked them to indicate whether they wished Mr Craig to continue in politics, whether as party leader or otherwise.

[567] By 26 June 2015, both Mr Dobbs and Mr Day had also resigned from the Conservative Party board, leaving Mr Stringer the only member. Mr Stringer was reported as attempting to recruit board members while Mr Craig was also reported as saying that he was "poised to snatch back the Conservative Party". Mr Craig said there would be a resolution of members to appoint a new board and that Mr Stringer would not be on it. In Mr Craig's view, Mr Stringer had been suspended by a direction of Mr Dobbs while he was still chair of the board, leaving the board vacant. Mr Stringer, however, purported to appoint four new members to the Conservative Party board which then resolved to suspend Mr Craig's membership.

[568] At 4.00 pm on 1 July 2015, Mr Slater published a further post on Whaleoil headed, "20 FAIR QUESTIONS FOR COLIN CRAIG". Among the questions were the following:

3. ... Are you confident you have been honest in your filing of all Electoral Returns in accordance with the Act, and have you been

totally honest about amounts and invoicing to keep Electorate campaigns under cap?

4. Do you categorically deny the new rumours emerging about a second sexual harassment case against you by another of your female employees?
5. Why did you not tell the truth to the media in late 2014 about Larry Baldock and Leighton Bakers' departures from the board and Party?
- ...
7. Why did you arrange a loan to yourself at 8% interest to cover this amount, and not lay this at the board, but rather rang around your supporters by phone, and excluded those who you knew would question this? Was that a "Board meeting" in your mind?
- ...
15. If there was no veracity to the Sexual Harassment Claim filed against you by a female employee, why did you make a large payout to the claimant and why was it necessary for all details to be hidden by a strict confidentiality agreement?
16. Why did you cover up and misdirect the Board as to the nature of this payout, when it took place, what it was for, and how much was involved? if you are innocent of all claims?

[569] Although the statements are in the form of questions addressed to Mr Craig by Mr Slater in the blog post, Mr Craig alleges it would be understood by an ordinary reader having relevant knowledge of the background to contain implied assertions or statements of fact which are defamatory of him.

### **Can statements in the form of questions be defamatory?**

[570] Words may be defamatory in whatever form they are used.<sup>128</sup> This is because the tendency and effect of the language, not its form, are the criteria. An author cannot escape the consequences by dexterity of style.<sup>129</sup> In principle, therefore, a question or a rhetorical question may be understood to convey a defamatory meaning.<sup>130</sup> It is immaterial whether the defamatory imputation is conveyed by words of direct assertion or by suggestion, for insinuation may be as defamatory as an explicit

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<sup>128</sup> *McAlpine v Bercow* [2013] EWHC 1342 (QB) at [62].

<sup>129</sup> Alistair Mallis and Richard Parkes (gen eds) *Gatley on Libel and Slander* (12th ed, Sweet & Maxwell, London, 2013) at [3.18].

<sup>130</sup> *McAlpine v Bercow* [2013] EWHC 1342 (QB) at [62].

statement.<sup>131</sup> Even if the words are used in interrogative form, they can still give rise to imputations that the person is either guilty, or that there are reasonable grounds for suspicion that the person is guilty, of certain conduct.

[571] In *McAlpine v Bercow*<sup>132</sup> the court found that a “tweet” stating “Why is Lord McAlpine trending? \*Innocent face\*”, imputed that Lord McAlpine, who had been a prominent politician, was a paedophile who was guilty of sexually abusing boys living in care. This was because at the time the tweet was sent, there was feverish reporting in the mainstream media about an unnamed senior politician who had taken part in the rape and abuse of young boys as a part of a paedophile ring.

[572] The New Zealand courts have followed the English practice of referring to three tiers of possible meaning that may arise out of allegations. These include:<sup>133</sup>

- (a) that the claimant<sup>134</sup> is guilty of the misconduct (tier 1);
- (b) that there are reasonable grounds to suspect that the claimant is guilty of misconduct (tier 2); or
- (c) that the claimant is being investigated, or there are grounds to investigate the conduct in respect of the misconduct (tier 3).

[573] These, however, are not absolute categories but rather provide a useful way of considering what the imputation is.<sup>135</sup> Furthermore, the New Zealand Supreme Court noted that the classification does not establish a hierarchy of weight given to words once assigned a tier as meanings in different tiers may shade into each other. The meaning of a statement or question, therefore, depends on the precise meaning of the words used and the context.

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<sup>131</sup> Alistair Mallis and Richard Parkes (gen eds) *Gatley on Libel and Slander* (12th ed, Sweet & Maxwell, London, 2013) at [3.18].

<sup>132</sup> *McAlpine v Bercow* [2013] EWHC 1342 (QB).

<sup>133</sup> *APN New Zealand Ltd v Simunovich Fisheries Ltd* [2009] NZSC 93, [2010] 1 NZLR 315 at [15].

<sup>134</sup> Since both the plaintiff in this case, Mr Craig, and the first defendant, Mr Slater, are suing each other in defamation, when referring generally to applicable legal principles it is convenient to refer to a person suing for damages for defamation as “the claimant” and a maker of an allegedly defamatory statement as “the author”.

<sup>135</sup> At [16].

## **The imputations**

[574] The meanings which Mr Craig alleges are contained within the questions posed in the blog post are these:

- (a) There are reasonable grounds to suspect Mr Craig of being dishonest in filing his electoral returns and lying about the amounts spent on his electoral campaign and that Mr Craig's spending exceeded the legal limits.
- (b) There are reasonable grounds to suspect Mr Craig of facing a second sexual harassment case and of sexually harassing another woman, in addition to Ms MacGregor.
- (c) Mr Craig lied to the media about why Larry Baldock and Leighton Baker left the Conservative Party and its board.
- (d) Mr Craig initiated and arranged a loan to the Conservative Party at eight per cent interest as a personal money-making venture and manipulated support for it by seeking telephone support for it from carefully selected board members.
- (e) Mr Craig abused his position of power as leader of the Conservative Party for personal financial gain.
- (f) Mr Craig paid a large sum to Ms MacGregor to settle her sexual harassment claim.
- (g) Mr Craig kept that large sum hidden from the board of the Conservative Party and misled the board about what it was for.

I consider each of the pleaded imputations in turn, referring to the questions by the number given to them in the publication.

[575] There was no evidence that there are reasonable grounds to suspect Mr Craig of being dishonest in filing his electoral returns and lying about the amounts spent on his electoral campaign, or that Mr Craig's spending exceeded the legal limits. Nevertheless, I am not persuaded that Question 3 bears the imputation pleaded by Mr Craig. While Mr Slater's view is that the question of whether a politician had complied with obligations under the Electoral Act represented a legitimate line of enquiry, the manner in which the question is expressed amounts to a statement of fact of a tier 3 type; namely, that there were grounds to investigate Mr Craig's conduct with regard to electoral returns and spending. Mr Slater undertook no independent investigation of that allegation and did not approach Mr Craig for comment before publishing the statement. He did not verify it in any way, either in the statement or in evidence at the trial.

[576] Question 4, to the extent that it refers to rumours rather than an assertion of proved fact, could be seen as coming within tier 2, indicating that there were reasonable grounds to suspect that Mr Craig was guilty of sexual harassment of another woman. Taken in conjunction with Mr Slater's assertion that he happened to know that there was a second victim, however, the question would be interpreted by an informed reader as an allegation that Mr Craig was guilty of that type of misconduct. I have addressed this issue in connection with the eighth and tenth causes of action. In my view, the question amounts to a statement of fact which is untrue and defamatory of Mr Craig but it adds little, if anything, to such damage as Mr Craig's reputation may have already suffered from the earlier statements.

[577] Question 5 is predicated on an assumption (an implied assertion of fact) that Mr Craig did not tell the truth to the news media in late 2014 about the departures from the board and Party of Mr Baldock and Mr Baker. Having regard to Mr Craig's evidence, which was corroborated by Mr Day, I am not persuaded that Mr Craig did lie to the media about Mr Baldock's and Mr Baker's departures. I am not persuaded, however, that an allegation that Mr Craig, in his capacity as the leader of a political party, had misled the news media on an internal disciplinary issue would be regarded by right thinking members of society as lowering Mr Craig's reputation. I find the statement was not defamatory.

*Defence of responsible communication on a matter of public interest – Question 5*

[578] In case I am wrong about that, I consider the public interest defence raised by Mr Slater. Mr Slater said he relied “on sources” for the allegations surrounding a witch-hunt that Mr Craig had pursued with other members of the board against Mr Baldock and Mr Baker. He could not recall whether he got any information from those sources. That seems highly unlikely since he acknowledged in further cross-examination by Mr Craig that he had simply cut and pasted the 20 questions from Mr Stringer's blog. He said he read them and thought they were valid questions that should be asked, given "the complete paucity of information" that was coming out from Mr Craig. When asked whether he had taken any steps beyond relying on the questions that somebody else had written, he said that it was a quote from a website that he had provided in full so that people could see context. Mr Slater said it was not for him or indeed any other journalist to investigate why someone is asking a question. He then said that if the quote which he had republished came from a reputable organisation like the New Zealand Herald, Fairfax, Radio New Zealand or TVNZ, there was a reasonable belief that they had checked it. He said he almost guaranteed that "no journalist checks a direct quote from somebody."

[579] It is difficult to understand Mr Slater's position. His point that he could rely on a mainstream media organisation such as those to whom he referred to have conducted research cannot apply to questions which he took from a blog site operated by Mr Stringer. Mr Slater knew Mr Stringer was an outspoken critic of Mr Craig, both publicly and within Conservative Party circles, and highly antagonistic towards him. Moreover, Mr Stringer was somebody whom Mr Slater described in evidence in extremely derogatory terms, indicating that he thought he was unreliable, on some matters at least.

[580] It was not responsible of Mr Slater to publish Question 5 without undertaking some enquiry of his own and without explaining the context to the readers of his statement. The public interest defence would not apply. However, a finding that Mr Craig had been defamed by Question 5 would be unlikely, in my view, to result in an award of damages, given that Mr Craig has established a reputation for misleading

the Conservative Party board, members of the news media and, therefore, the public on matters affecting his leadership of the Conservative Party.

[581] Question 7 is not intelligible in that it refers to Mr Craig arranging a loan to himself; I repeat it:

Why did you arrange a loan to yourself at 8% interest to cover this amount, and not lay this at the board, but rather rang around your supporters by phone, and excluded those who you knew would question this? Was that a "Board meeting" in your mind?

[582] The question refers to an undisclosed amount. The preceding question throws some light on what was intended by Question 7, but not much. Question 6 in the list reads:

Why did you overspend the Party budget in late 2014 by approx. \$680,000 and not consult your Board about this at the time?

Endeavouring to make sense of the two questions considered together, it may be inferred that Mr Craig was guilty of overspending the Conservative Party's budget and that, to cover the excess cost, he then lent the Party \$680,000 for which he charged interest at a rate of eight per cent per annum. The suggestion in Question 7 was that he rang only some members of the board whom he knew would be supportive of what he had done and then purported to represent that the loan had been approved at a board meeting. If a fully-informed reader drew those inferences, the way in which the questions are posed assumes the existence of facts which, if true, would tend to show that Mr Craig was an incompetent manager of the Conservative Party's finances and that he advanced money on interest to cover the over-expenditure. I am not persuaded that the inference that Mr Craig used the loan as a money-making venture flows from the allegation, so that there is no basis for the claim that he was defamed in the manner pleaded. I do not consider that an allegation that Mr Craig had phoned only supportive members of the board to obtain for approval of his actions is defamatory. That part of the claim fails.

[583] Questions 15 and 16 address, in different language, the allegations that Mr Craig had covered up sexual harassment of Ms MacGregor, making a large payout to her in return for the withdrawal of her claim, and that he misled the board about

those matters. I accept that the way in which the questions are framed amounts to assertions that Mr Craig acted in that manner, but I have held already that the assertions were either true or materially true in substance. They do not support a claim for damages for defamation.

**Twelfth cause of action – Publication 15 – Whaleoil – 8 July 2015, 10.00 am**

[584] At 10.00 am on 8 July 2015, Mr Slater posted again on the Whaleoil site, under a headline quoting the Monty Python film, *Life of Brian*: “HE'S NOT THE MESSIAH, HE IS A VERY NAUGHTY BOY.” Referring to Mr Craig's letter to Conservative Party members seeking to gauge support for his return as leader, Mr Slater referred to Mr Craig's statements that the allegations of sexual harassment were false and had been withdrawn. Mr Slater said:

Hmm ... I haven't withdrawn any of my allegations ... neither has John Stringer as far as I am aware.

In fact I stand by everything I have stated.

[585] Mr Craig says that the natural and ordinary meaning of Mr Slater's statement that neither he nor Mr Stringer had withdrawn any of the allegations, and that Mr Slater stood by everything he had stated, was to repeat each and all of the imputations or meanings arising from the previous defamatory statements pleaded and that the defamatory allegations conveyed by those meanings are true.

[586] A reader of the statement would need to have a compendious knowledge of the controversy between Mr Craig and Mr Slater and the content of the Whaleoil blogs since 19 June 2015 to draw any real meaning from the brief statement that Mr Slater stood by everything he had stated. While the statement may be relevant to any award of damages, it cannot found a separate cause of action in defamation.

**Thirteenth cause of action – Publication 16 – Whaleoil – 18 July 2015, 10.00 am**

[587] On 18 July 2015 at 10.00 am, Mr Slater posted an item on the Whaleoil site headlined: "BEHIND THE SCENES OF THE COLIN CRAIG CATASTROPHE". It quoted public statements by Mr Stringer, including a passage quoted by Mr Slater as follows:



It was well known around the Board for some time, that "Larry is gone ... you will be next, John, followed by RM and then Brian." Of course, that is exactly what happened. Colin witch-hunted ex-MP Larry Baldock out of the Party ...

I was also undermined with a whispering campaign for months as a "leak." At first this was directed at Larry, who was sacked as a candidate, sacked from the Board, and then suspended from the Party. A relentless and driven witch-hunt.

[588] This cause of action addresses the circumstances discussed above at [221] – [223]. Mr Craig pleads that the imputations to be taken from Mr Stringer’s statements quoted by Mr Slater are that Mr Craig:

...in an abuse of power, manipulated the resources of the Conservative Party to pursue a relentless and driven witch-hunt against Larry Baldock, making sure that he was sacked as a candidate in the 2014 general election, sacked from the Board and then suspended from the Party without any reasonable cause.

It is said that meaning is defamatory of Mr Craig.

[589] The imputation to be taken from the pleaded statements is that Mr Craig used his resources to conduct a witch-hunt against Mr Baldock and then unfairly sacked him as a candidate and board member and suspended him from the Party. A witch-hunt is a single-minded and uncompromising campaign against a person or a group of people with unacceptable views or behaviour, especially one regarded as unfair or malicious persecution.<sup>136</sup> I accept that the reference carries with it the imputation that Mr Craig's efforts to remove Mr Baldock were unfair, but looking at the publication as a whole, I am satisfied that Mr Slater was directing the piece to an argument that the Conservative Party was so riven by internal strife between prominent members that it had no political future. The passages attributed to Mr Stringer were expressions of Mr Stringer’s opinion, quoted as background to the opinions Mr Slater then expressed. They were quoted to demonstrate what Mr Stringer had said, not for the truth of the content but to support Mr Slater’s opinion that Conservative Party board members were at odds with each other. Readers of the blog would have been able to

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<sup>136</sup> Oxford English Dictionary (online ed, Oxford University Press, 2018). See also *The Shorter English Oxford Dictionary* (6<sup>th</sup> ed, Oxford University Press, New York, 2007) at 3650: “a malicious campaign against a group of people with unpopular or unorthodox views or behaviour” and Tony Deverson and Graeme Kennedy (eds) *The New Zealand Oxford Dictionary* (Oxford University Press, South Melbourne, VIC. 2005) at 1298: “a campaign directed against a particular group of those holding unpopular or orthodox views.”

distinguish between the quotes from Mr Stringer and expressions of Mr Slater's opinion and to appreciate that it was the fact that Mr Stringer held those views, and expressed them in those terms, that either justified Mr Slater's opinions or did not. Even if it was appropriate to hold that Mr Slater was repeating statements of fact, which I do not consider to be the case, the defence of responsible communication on a matter of public interest would be available to him in respect of those aspects. As for the rest of the publication, on which Mr Craig does not rely, it is clearly opinion and I do not doubt, having heard Mr Slater give evidence on these matters, that they were opinions which he held honestly.

[590] Properly analysed, this piece was merely a political commentary of the kind protected from a defamation claim by the law and the claim based upon it must fail.

[591] It is appropriate to add that I heard and accepted evidence from Mr Laurence Day, a respected businessman and former Conservative Party board member, who was intimately involved in the matters concerning Mr Baldock's eventual departure from the Party. He stated very firmly that there was no witch-hunt by Mr Craig and that that the matter was dealt with by the board as a whole in accordance with appropriate disciplinary procedures.

**Fourteenth cause of action (against Mr Slater only) – Publication 17 – One News Now – 29 July 2015**

[592] Mr Craig considered the stream of articles attributed to Mr Slater on the Whaleoil blog site to be part of an orchestrated "dirty politics" campaign involving Mr Slater, Mr Williams and Mr Stringer. On 29 July 2015, Mr and Mrs Craig held a media conference at which they announced the publication of a 10-page booklet entitled "Dirty Politics and Hidden Agendas" that was subsequently delivered to over 1.6 million New Zealand homes at a cost to Mr Craig of over \$280,000. Advance copies of the booklet were distributed to the news media representatives who attended the media conference. Later that day, Mr Slater was quoted on the *One News Now* website managed by Television New Zealand, after Mr Craig had announced that he would sue Mr Slater, Mr Williams and Mr Stringer:

... The truth is quite the defence, and now he is forcing me to pull his life apart bit by bit inside a Courtroom ... we have only dealt in verifiable fact.

[593] It is pleaded that this is a further publication of the defamatory statements alleged to have been made in all previous publications, on the basis that Mr Slater was confirming that the defamatory meanings alleged to have been contained those statements were verifiable and true.

[594] For the reasons given in dismissing the twelfth cause of action, I conclude that the statement cannot found a separate cause of action in defamation, although it may be relevant to any award of damages.

**Fifteenth cause of action (against SMCL only) – Publication 18 – Peter Belt (Whaleoil) letter – 20 June 2015, 4.45 pm**

[595] At 4.45 pm on 20 June 2015, about 15 minutes after Mr Slater posted Publication 6 on Whaleoil, Mr Belt sent an email to Lawrence Day and three other Conservative Party board members; he copied it to Mr Craig and Mr Slater. He said that Whaleoil was working on an update for 5.30 pm based on information received from within and outside the Conservative Party. Observing that he realised he was not giving the recipients much time to respond, he asked the four board members to confirm, deny or comment on the assertions that Mr Craig was not standing down at all, that knew he had the numbers to withstand the challenge to his leadership and that the four of them were the ones supporting Mr Craig during the "coup".

[596] Mr Belt then said:

Sources close to the people that have been involved in the (approximate) \$107,500 settlement confirmed to us that part of the payment was to cover employment issues, the other part to essentially ensure silence from the party involved by not taking the sexual harassment allegations into the public.

He referred to Whaleoil and other media organisations holding documented proof of poems, text messages and other documents and suggested that it was beyond dispute that Mr Craig had sought a relationship while married and while a Conservative Party leader. He asked whether the recipients had been given access to the documents by Mr Craig or other board members; whether they had seen them or read them; and asked what their position was on that material. Mr Belt then asked whether they were willing to comment on the reasons behind their decision to stand behind a person who had

clearly sought an extra marital relationship, paid money to silence the person and why they thought this was the basis for the Conservative Party to continue with Mr Craig at the helm.

[597] On the basis that this was a publication to the four Conservative Party board members, Mr Craig pleads that SMCL, as publisher of Whaleoil on whose behalf Mr Belt had sent the letters, defamed him. It is said that the meanings contained in Mr Belt's letters asserted that Mr Craig had paid a large sum of money (approximately \$107,500) to Ms MacGregor at least part of which was to silence her, and that he actively sought to have a sexual affair with Ms MacGregor while he was married.

[598] I find that Mr Belt's letter was not intended to do more than state what information had been received by Whaleoil and to seek comment. Mr Belt was entitled to take the view that the allegations he was referring to were known to the four members of the board to whom it was sent, and to Mr Craig. He was informing them that that Whaleoil had been told of the allegations also. Taking Mr Belt's letter as a whole, the audience of four people for whom it was intended would not have understood Mr Belt to be making a statement of fact other than that he had received certain information which he believed they also had received. It was merely a background to seeking their comment and it was fair of him to copy the letter to Mr Craig. In any event, I have found that the allegations referred to in Mr Belt's letter were either true or substantially true. If I am wrong about that, the letter clearly comes within the ambit of statements protected by the rubric of a responsible communication on a matter of public interest. In any event, the circulation of the letter was so confined as not to justify any award of damages if Mr Craig had been able to overcome the obstacles to proving a remediable defamation that I have discussed.

[599] For those reasons, the fifteenth cause of action fails.

[600] Before turning to the question of remedies for those causes of action on which Mr Craig has succeeded in proving that he was defamed and on which Mr Slater's defences have failed, I turn to consider Mr Slater's counterclaims.

## THE COUNTERCLAIMS

### Background

[601] In the statement made by Mr Craig at the media conference he conducted with Mrs Craig on 29 July 2015, Mr Craig referred to “a strategy ... to remove [him] as leader of the party” by a group of people<sup>137</sup> who believed they could manipulate political outcomes. He adopted a label for them, "the Dirty Politics Brigade", taken from a 2014 publication, "Dirty Politics" by Mr Nicky Hager. Mr Craig said that the day was a good day because it was the day "we start to fight back against the Dirty Politics Brigade who have been running a defamatory strategy against me."

[602] Mr Craig said that the booklet addressed what he called, a “campaign of defamatory lies" by the Dirty Politics Brigade to undermine his public standing. The first false claim was that he had sexually harassed one or more persons. The second false claim, he said, was that he had made a payout or payouts to silence people, a claim he said was nonsense. In respect of the allegations about Ms MacGregor, Mr Craig said that the only payment he had made to her was the amount of \$16,000 in part payment of her final invoice; the suggestions of large sums of "hush money" being paid were "utterly wrong and seriously defamatory." He also referred to the false allegation that he had sent sexually explicit text messages, saying he had never sent such a message in his life. Mr Craig said that the fourth false claim was that there was another alleged "victim" of sexual harassment and expressed his gratitude to members of the news media that many of them chose not to run the "other woman" story.

[603] Mr Slater's counterclaim alleges two separate causes of action, both of which arise from the booklet.

### Mr Slater's first cause of action

[604] The pleading of the first cause of action identifies the content of the booklet said to contain meanings defamatory of Mr Slater:

- (1) Dirty Politics is a phrase used to describe political activity that is unethical. To use a sporting comparison it is when players forget

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<sup>137</sup> Identified in the booklet as including Mr Slater, Mr Williams and Mr Stringer.

the rules and deliberately target an opposing player by any means. It is a professional foul on a grand scale and the corruption of a process that should be free and fair. In the case of those targeted by dirty politics the results can be damaging for a lifetime. ...

Of particular concern is that some engage in the practice of "attack politics" to harm opponents. Attack politics is where a person deliberately targets an opponent by finding their weaknesses and leveraging that to publically embarrass them or to bring them down. It can even involve deliberate foul play such as "false allegations" or "entrapments".

We are a nation that believes in a fair go. We want our referees to be fair and every game to be played in a sportsmanlike way. We do not like corrupt people, and honesty is one of our core values. We must therefore reject the "Dirty Politics Brigade" who are seeking to hijack the political debate in New Zealand.

This booklet details the latest action by the Dirty Politics Brigade, this time in an attack on Conservative Party leader, Mr Colin Craig.

(2) On page 4 a picture of the defendant above the heading "THE SCHEMERS IN PLOT AGAINST CRAIG".<sup>138</sup>

(3) On page 5 the booklet:

- Ran an attack strategy against Craig
- Added additional allegations to those made by Williams
- Co-ordinated with John Stringer on the Conservative Party Board ...

...

Slater was central in constructing the strategy against Craig. The "strategy" as he explains it in his own words was a campaign to undermine Craig on moral grounds and ultimately "mow him down" by the slow and persistent release of allegations. In Slater's words it was to be a "death by a 1000 cuts".

Whaleoil was well resourced for the attack. He not only had the false allegations and documents from the "attack dossier" that Williams had collated but also a steady feed of information from Stringer inside the party. Add to that the allegations of his own making and he had plenty of ammunition to shoot down Craig.

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<sup>138</sup> The word "SLATER" appears below Mr Slater's photograph. In a section on the following page, under the heading "Cameron Slater [Whaleoil]", there is an assertion that Mr Slater was central in constructing the strategy against Mr Craig.

The strategy was a comprehensive one. Whaleoil used his blog along with "leaks" to the journalists (whom he refers to as "churnalists") to keep constant pressure on Craig in the media space. This was the frontal attack.

It was not however the only attack. Whaleoil also fed false allegations back to Stringer within the party to undermine party leadership and ensure Craig was embattled on a second front.

- (4) On the same page in large text the booklet says:

Slater was central in constructing the strategy against Craig

- (5) Page 7 of the Booklet:

What appears to the public to be random revelations is nothing of the sort, there is a clear agenda in place.

EMAIL: Whaleoil to Stringer:

... I wouldn't say we are in a hurry but sh\*t is coming CC's way, the strategy is being worked out ... Craig ... with his various out-of-marriage conquests.

Firstly what Whaleoil clearly acknowledges here is that there is a deliberate "strategy" against Craig that "is being worked out". What appears to the public to be random revelations is nothing of the sort, there is a clear agenda in place.

- (6) The Booklet then goes to list a number of "lies" which are attributed to the defendant.

- (7) Page 8:

COMMENT: It is staggering when you think just how many lies take place in this short exchange. Firstly we know there was no amount of \$107,500 or anything like it, there were no multiple sources, no information or documented proof, nothing from Colin Craig himself, and certainly no "number directly from a party involved in the transaction". Yet this utter fabrication was accepted as valid both publically and within the party.

- (8) Page 9]

Of course we also know from Whaleoil directly the strategy was to cast Craig as a serial offender and so the creation of a second woman was essential to support that storyline.

And:

Firstly – Whaleoil email to Media:

"There is a second victim. Similar circumstances – him trying to get a staffer to sleep with him. Also went to human rights commission with a settlement to shut her up. Discovering that there was a second victim was why the chairman finally resigned."

And:

CONCLUSION:

There are many more examples of the Dirty Politics Brigade attacking Craig over the last month but they all follow a similar theme and therefore I think the above examples suffice to paint the picture. Essentially it is a series of false allegations, each constructed with a plausible story. Each allegation is then broadcast as widely as possible to undermine and destroy Craig's public credibility and reputation.

- (9) A cartoon with the caricature of the defendant holding a rope attached to weights hanging over a caricature of the plaintiff is on the back (last page) of the Booklet. The weights say, "FALSE ALLEGATIONS" and "MORE FALSE ALLEGATIONS".

[605] Mr Slater claims that the identified statements, read in context, by their natural and ordinary meanings conveyed to the ordinary person the imputations that Mr Slater:

- (a) developed or coordinated the strategy to defame and spread lies about Mr Craig;
- (b) made up allegations relating to Mr Craig, including the creation of a second alleged victim of Mr Craig's sexual harassment;
- (c) made up material he published on his blog;
- (d) acted with ill will towards Mr Craig by gathering material Mr Slater knew was fake, or untrue, and publishing the same on his blog;
- (e) published material on his blog knowing it not to be true; and
- (f) is a compulsive liar.



[606] Mr Craig admits each of the alleged meanings except the assertion that the statements relied upon contain the implied statement that Mr Slater is a compulsive liar. Mr Craig argues that the proper imputation to be drawn from the published statements is the assertion that Mr Slater is a "calculated liar".

[607] Mr Craig pleads that the admitted meanings are true or not materially different from the truth or are in substance true or not materially different from the truth. Although Mr Craig pleaded a defence of honest opinion, he withdrew that defence in closing his case, accepting that the statements were statements of fact rather than opinion. Mr Craig also relies upon the "reply to an attack" qualified privilege.

### **Mr Slater's second cause of action**

[608] The second cause of action brought by Mr Slater in reliance on the booklet relates to what purports to be an exclusive interview "with Mr X" who is said in the booklet to be

... someone who knows those involved. His observations and information is to the best of our knowledge accurate although his opinions are of course his own and not endorsed in anyway.

[609] Mr Craig acknowledged during the trial that the so-called interview was what he described as a "literary device": there was no Mr X and no interview. The format had been adopted simply to express Mr Craig's own views.

[610] The passages from the "interview" pleaded by Mr Slater to contain defamatory meanings are:

INTERVIEWER: Obviously Cameron Slater and John Stringer have worked closely on this one, are they friends?

MR X: Actually it's John and Pete [Peter Belt who works at Whaleoil] who know each other from way back. Still it was definitely Cam who made up the second victim story but you already know that ... John Stringer is a ... idiot really, I think he really believes he is some sort of crusader for good in this whole thing ... [laughs] maybe he should look at who he is working with here.

[611] Mr Slater also relies upon a pull-out quote from the above passage, printed in the booklet in large bolded text: "... it was definitely Cam who made up the second victim story but you already know that."

[612] Mr Slater pleads that the statements, read in context, by their natural and ordinary meanings convey to the ordinary person the imputations that Mr Slater:

- (a) made up or created allegations relating to a second victim of Mr Craig's sexual harassment;
- (b) made up material he published on his blog;
- (c) acted with ill will towards Mr Craig by gathering material Mr Slater knew was fake, or untrue, and publishing the same on his blog;
- (d) published material on his blog knowing it not to be true; and
- (e) is a compulsive liar.

[613] Mr Craig admits the meanings except the last, again saying that the proper meaning was that Mr Slater was a "calculated" liar, but he says the imputations are true and relies on the reply to an attack qualified privilege as an alternative defence.

### **Mr Slater's arguments**

[614] In support of the counterclaims, Mr Henry argued that the *Dirty Politics and Hidden Agendas* booklet was very carefully designed to provide maximum effect on the readership which was intended to be every household in New Zealand. He submitted that the claim of a grand conspiracy was a creation of Mr Craig, not the reality, and that the evidence proves that Mr Williams was the principal source of information to the defendants and, either directly or through others, to the news media at large. As a result, the news media generally were aware of the allegations about Mr Craig's behaviour regarding Ms MacGregor, the settlement of her claims and Mr Craig's attempts to cover up what had occurred with both the board of the Conservative Party and the public generally. Against that background, Mr Craig's

sudden "stand down" from the Conservative Party board triggered the media frenzy between 19 June and 22 June 2015. This was fuelled by Mr Stringer, whom Mr Henry described as a very aggrieved, seriously religious member of the board, who had said in an email to all board members sent at 11.00 pm on 19 June 2015 that he had spoken to the media that evening to protect his own reputation.

[615] Mr Henry described the story as being "a classic political leader/pretty press secretary sexual scandal" with the variant that there was "no sex, just very inappropriate behaviour including sexual harassment." Although Mr Craig purported to portray himself in the booklet as the subject of some major political plot, he was merely the victim of his own frailties. The allegation that Mr Craig had been subjected to a campaign of lies and "a grand scale conspiracy" was merely a fantasy to disguise the truth which was simply that the news media generally exposed Mr Craig's misbehaviour.

[616] Mr Henry was particularly critical of the technique adopted by Mr Craig in the booklet of asserting that there were many lies of which he listed only several, numbering them 1, 4, 7 and 14, as if to indicate that there were many others which he had not listed. Mr Henry referred to the evidence at trial which established:

- (a) that Mr Craig had indeed sexually harassed Ms MacGregor;
- (b) that he had made a financial settlement in exchange for which Ms MacGregor withdrew her complaint to the Human Rights Commission;
- (c) that there were written communications by Mr Craig to Ms MacGregor by email containing inappropriate sexual comments (and that the absence of any evidence of such comments being communicated by text was a result only of Mr Craig having failed to disclose the relevant information).

[617] As to the allegation about the second victim, Mr Henry argued, first, that the allegations were relatively minor, never picked up and repeated by mainstream media

and, from statistics produced by Mr Slater relating to his blog posts, not read by more than a few thousand people. Mr Craig's response in publishing the booklet to 1.6 million homes in New Zealand was to publish the second victim allegation far more widely than the original publication. Second, Mr Henry alleged that the second victim story had been, in effect, planted by Mr Craig through Ms Flannagan misleading Mr Slater. Mr Henry conceded that while it may just have been an unfortunate misunderstanding by Mr Slater in circumstances where Mr Craig was simply endeavouring to use Ms Flannagan as a means of gathering information about what Mr Slater knew about Ms MacGregor's allegations, the second victim story was highlighted by Mr Craig in the booklet to support his theory of a grand conspiracy of fabricated allegations against him.

[618] Mr Henry argued that Mr Craig had failed to establish the truth of the imputations that Mr Slater had deliberately developed a strategy to defame Mr Craig by spreading lies about him, including making up allegations such as the second victim story and gathering and publishing material that he knew was false and that Mr Slater was just a liar.

### **Mr Craig's defences**

[619] In advancing the defence of truth, Mr Craig argued that it is clear on the evidence that Mr Slater was part of a deliberate strategy to remove him as leader of the Conservative Party. He relied on Mr Slater's post on the Whaleoil blogsite on 16 November 2014 when he republished lengthy quotes from the Walden Report which had been commissioned by the Conservative Party board in the wake of the 2014 election failure. Under the headline "Leaked report says Colin Craig doesn't listen, is an idiot, and a dictator", Mr Slater remarked:

I have long said that Colin Craig is a political retard.

Many people attacked me for being so blunt, but they were usually acolyte, single issue nutters or forelock tuggers from the Conservative party.

Basically though the bloke is a dead-set political idiot, NZ politics is better without him.

[620] After quoting Mr Walden's views, Mr Slater concluded his piece with the following:

Colin Craig has made a habit of coming third or worse in elections. He has blown millions of dollars proving to everyone but himself that he is dead-set useless at politics. If he won't listen to his advisors then he really is politically retard [sic] and my comments at the beginning of this article stand, New Zealand is better off without him involved in politics.

[621] The evidence established to my satisfaction that it was Mr Stringer who sent the Walden Report to Mr Belt at Whaleoil. Mr Craig relied on the prominent part Mr Stringer had played in leaking information to Mr Belt and Mr Slater, and to other news media representatives, following the sauna interview on 9 June 2015 in the period of intense media speculation leading up to and immediately following Mr Craig's resignation on 19 June 2015. In support of his allegation of a conspiracy, Mr Craig pointed to Mr Belt's emails to Mr Stringer feeding him with the information that Mr Craig had paid a settlement sum of close to \$107,500. In that email exchange on 15 June 2015, Mr Belt told Mr Stringer:

We have access you would not believe from multiple sources but we can not do anything that would break the confidentiality agreement between C and R

Luckily we have information and documented proof written by CC himself that is excluded from the agreement

...

wouldn't say we're in a hurry but shit is coming CC's way the strategy is being worked out.

he's paid to silence a sexual harassment claim

Seems C is somewhat of a prolific author when he's enamoured with his various out-of-marriage conquests

Let's put it this way, if the CP go into the next election and he's still there, he'll be mowed down on moral issues. He can not be the leader of a conservative party that espouses family values because he may not have gone for kids, but that's the only difference between him and Capill

[622] Mr Craig argued that the strategy was what Mr Slater referred to in one blog as "death by a thousand cuts" to force Mr Craig into resigning. He said that Mr Williams, Mr Stringer and Mr Slater then combined to keep each other informed,

with both Mr Williams and Mr Stringer providing Mr Slater with draft blog posts which he then faithfully published.

[623] As an example of Mr Slater lying and publishing statements which he had either made up or which he knew to be false, Mr Craig referred to the "second victim" story, saying that Mr Slater had either made it up through inference from what he had been told by Ms Flannagan or had ignored the clear communication to him that he should not draw the inference that Ms Flannagan perceived. Mr Craig pointed also to Mr Slater's plainly false statement in Publication 1 that he had copies of dirty text messages that Mr Craig was alleged to have sent.

[624] As to evidence of Mr Slater's ill will towards him, Mr Craig referred to Mr Slater's agreement under cross-examination that he did not think Mr Craig should be in politics and that he wanted Mr Craig to resign. He also referred to acknowledged statements by Mr Slater that Mr Craig was "a political retard" and "a dead-set political idiot"; that New Zealand politics was better off without him; that Mr Craig was a narcissist, "scumbag", "ratbag", "political spastic" and "nutcase", and that he was "evil". Mr Slater conceded in evidence that he had taken credit for getting Mr Craig "kicked off" the Conservative Party board.

### **Imputations in the first and second causes of action were defamatory**

[625] I am satisfied that the admitted imputations in both the first and second causes of action in Mr Slater's counterclaim are defamatory. Mr Slater is a journalist and serious political commentator. He espouses principles which include a recognition of the importance of accuracy in reporting facts and of dealing honestly with people who might provide him with information and with his readership. Allegations that he is a liar and that, in publishing material in relation to Mr Craig he made up material, gathered information he knew was fake or untrue and published the same knowing it not to be true were likely to lower his reputation as a journalist and commentator in the eyes of right-thinking members of society, and to damage his reputation professionally.

## **Defence of truth**

[626] Mr Craig's booklet was published as a response to what Mr Craig described as a strategy by Mr Slater, Mr Williams and Mr Stringer to remove him as leader of the Conservative Party, by undertaking what he called a "campaign of defamatory lies" to undermine his public standing. I have held that Mr Slater understood that, from different standpoints, Mr Williams, Mr Stringer and he shared a common objective which he could serve by publishing information likely to damage Mr Craig's political credibility. Mr Slater considered that information would expose Mr Craig as a person who had manipulated and sexually harassed a younger woman who was an employee, misled his Conservative Party colleagues about the true nature of his relationship with Ms MacGregor; acknowledged the truth of the allegations of sexual harassment by reaching a financial settlement in return for which the formal complaint to the Human Rights Commission was withdrawn; and insisted on the confidentiality of the terms of the settlement so that he could maintain to the Conservative Party board and in public that the allegations of sexual harassment were unfounded.

[627] But Mr Slater does not sue Mr Craig on the basis that he falsely alleged a conspiracy between Mr Williams, Mr Stringer and him. He sues because of the imputation that he is a liar who made up allegations and obtained false information which he published knowing the material to be untrue.

[628] I have found in response to Mr Craig's defamation claims against Mr Slater that the assertions that Mr Craig had been guilty of moderately serious sexual harassment of Ms MacGregor; that he had made a substantial financial settlement with her on confidential terms in exchange for the withdrawal of her claims to the Human Rights Tribunal; and that he had deliberately misled the Conservative Party board about those matters were true or materially true in substance. I have held that Mr Slater believed the information on which his assertions about Mr Craig were based was reliable, notwithstanding my finding that he acted recklessly in drawing and acting upon the inference that Ms Flanagan was acting for a second victim of sexual harassment by Mr Craig.

[629] For the reasons given in making those findings, I do not accept that Mr Slater spread lies about Mr Craig; made up allegations about him; gathered information that he knew was fake or untrue; or published material on Whaleoil knowing it not to be true. I am satisfied he is neither a compulsive nor a calculated liar. It follows that Mr Craig has not proved that the pleaded imputations are either true or materially true in substance. For those reasons, the defence of truth fails in regard to the counterclaim causes of action.

### **Reply to attack qualified privilege**

[630] I turn next to consider Mr Craig's reliance on the reply to an attack qualified privilege. As I have explained, a person responding to an attack on his or her reputation has a qualified privilege against liability for defamation in making statements in reply, provided the statements are made in good faith and are relevant to the allegations made in the initial attack. Moreover, the reply may be expressed in forceful or robust terms by way of counterpunch to prevent the allegations calling for a response from continuing to operate to his or her disadvantage. Undoubtedly, Mr Craig's reputation was placed under serious attack by Mr Slater's publications between 19 June 2015 and 29 July 2015. For good reason, therefore, it was not suggested by Mr Slater that Mr Craig was not entitled to claim the privilege.

[631] I have permitted Mr Slater to plead that Mr Craig had lost the privilege because he was predominantly motivated by ill will towards Mr Slater or otherwise took improper advantage of the occasion of his published response.<sup>139</sup> I have said:

- (a) Mr Craig will not be protected by the qualified privilege if the main reason for his response was not because he wanted to set the record straight, or vindicate his own reputation, but because he wanted to hurt or injure Mr Slater.
- (b) Harming or injuring Mr Slater's reputation must be the dominant motive if the privilege is to be lost.

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<sup>139</sup> Defamation Act 1992, s 19(1).



- (c) The Court's focus should be on Mr Craig's motives, not the end result;
- (d) Mr Craig's response must be relevant to the initial attack.
- (e) Where the strength of the attack is tied in some way to the character of the person who made it, attacking those characteristics is relevant.

*Did Mr Craig lose the privilege because he was predominantly motivated by ill will?*

[632] As I have noted, s 19 of the Defamation Act 1992 provides that a defence of qualified privilege will be lost where the claimant proves that there has been misuse of the occasion, either through the author being predominantly motivated by ill will towards the claimant, or otherwise taking improper advantage of the occasion of publication. I address first the question of ill will.

[633] Although Mr Craig countered the Whaleoil publications which he considered to have defamed him by asserting a conspiracy between Mr Slater, Mr Williams and Mr Stringer to spread deliberate lies about him, I find that his primary motive was to correct what he had maintained throughout were untrue statements. The principal focus of the booklet were the four allegations highlighted as lies number 1, 4, 7 and 14; namely, that Mr Craig had sexually harassed Ms MacGregor, that he had made her a payout of around \$107,500, that he had sent her sexually explicit text messages and that there was a second victim. I accept Mr Craig's submission that Mr Slater reinforced his attacks upon him by claims that he or his sources had documentary evidence supporting his statements and that he stood by everything he had stated. In making those assertions, Mr Slater was claiming a reputation for honesty. It was not illegitimate, therefore, for Mr Craig's retaliation to the attacks on his credibility to call Mr Slater's credibility into question.

[634] The question of whether Mr Craig's reply was reasonably directed towards those persons who had an interest in receiving it turns on whether Mr Craig went too far in sending the booklet to 1.6 million New Zealand homes. That is, whether the reply was to the audience who might reasonably have been assumed to have been aware of the publications which formed the basis of Mr Craig's claims. The statements by Mr Slater that Mr Craig had sexually harassed Ms MacGregor, had made a large

payout to her and that he had misled the Conservative Party board about those matters were made in an interview broadcast by a national radio network at a time when it might have been expected to have had a substantial audience. No evidence was led as to the size of Newstalk ZB's audience at that time, but I take judicial notice of the fact that Newstalk ZB operates through a network which broadcasts throughout the country. Moreover, given the heightened news media interest in Mr Craig's resignation only two hours earlier, it is reasonable to have expected that other news media organisations would have picked up and reported on Mr Slater's disclosures during the interview. The evidence establishes that the allegations were repeated not only by Mr Slater in his Whaleoil blog posts, but by other news media organisations between 19 June 2015 and the media conference on 29 July 2015 at which Mr Craig launched the booklet. It is safe, therefore, to characterise the revelations as having been published in various forms both in print and broadcast media throughout New Zealand. I exclude from those observations, however, the allegation that Mr Craig was guilty of the sexual harassment of another or more than one other woman. It appears from the evidence that the most prominent exposure of that allegation, which had largely been confined to the Whaleoil blogsite previously, resulted from the distribution of Mr Craig's booklet.

[635] Because the core allegations had received widespread publication throughout New Zealand, I consider Mr Craig's decision to distribute the booklet to every New Zealand household was a justifiable response. While it may be improbable that another person would have thought such a response to be worthy of the expense, I accept that Mr Craig believed genuinely that he should take that unprecedented step to correct what he claimed were false accusations.

[636] I find, therefore, that:

- (a) Mr Craig was entitled to rely on the qualified privilege of a reply to an attack in responding as he did to Mr Slater's publications;
- (b) the distribution of the reply was not so excessive as to lead to the conclusion that the reply was not relevant to the originating publication;

- (c) Mr Craig was not predominantly motivated by ill will towards Mr Slater;  
and
- (d) Mr Craig did not otherwise take improper advantage of the privileged occasion in publishing the booklet.

### **Conclusion on counterclaims**

[637] In those circumstances, Mr Slater's counterclaim for damages for defamation by Mr Craig must fail.

### **SUMMARY OF CONCLUSIONS ON LIABILITY – CLAIMS AND COUNTERCLAIMS**

[638] I have found that Mr Craig was defamed by Mr Slater in two publications in respect of which I have rejected Mr Slater's defences. They are the imputed statements that Mr Craig:

- (a) had placed Ms MacGregor under financial pressure to sleep with him (Third cause of action – Publication 4); and
- (b) sexually harassed at least one victim other than Ms MacGregor (Eighth cause of action – Publication 10).

[639] I have found also that a defamatory statement repeating the imputation made in Publication 4 was made two days later in Publication 12. Defamatory statements repeating the imputation made in Publication 10 were made in Publications 12 and 14.

[640] Mr Slater's counterclaim in defamation has failed and must be dismissed.

### **REMEDIES – DECLARATIONS AND DAMAGES SOUGHT BY MR CRAIG**

[641] I am required next to consider what remedies should be ordered to meet the defamation of Mr Craig by Mr Slater. Mr Craig seeks declarations, as permitted by s

24 of the Defamation Act, that the defendants are liable to him in defamation. He also seeks general, aggravated and punitive damages of unspecified amounts and costs.<sup>140</sup>

### **Declarations under s 24 of the Defamation Act 1992**

[642] Section 24(1) of the Defamation Act provides:

In any proceedings for defamation, the plaintiff may seek a declaration that the defendant is liable to the plaintiff in defamation.

[643] In *Williams v Craig*, the Court of Appeal observed that a favourable verdict on liability is the plaintiff's primary vindication.<sup>141</sup> That is itself public recognition of the false and defamatory nature of a statement or statements made by a defendant. It is that verdict which restores the plaintiff's reputation.

[644] Declarations that Mr Slater and SMCL are liable in defamation to Mr Craig on account of the two statements I have identified above at [638] will be included in the formal orders of the Court.

### **General damages**

[645] In proceedings for defamation, it is not necessary to prove special damage.<sup>142</sup> General damages are an estimate of the probable extent of actual loss a person has suffered, and will likely suffer in the future. In defamation, the purpose of general damages is three-fold:<sup>143</sup>

- (a) first, to compensate the plaintiff for damage caused to his reputation;
- (b) second, to vindicate his good name;

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<sup>140</sup> Defamation Act 1992, s 43(1): In any proceedings for defamation in which a news medium is the defendant, the plaintiff shall not specify in the plaintiff's statement of claim the amount of any damages claimed by the plaintiff in the proceedings.

<sup>141</sup> *Williams v Craig* [2018] NZCA 31 at [32].

<sup>142</sup> Defamation Act 1992, s 4.

<sup>143</sup> *Siemer v Stiassny* [2011] 2 NZLR 361 (CA) at [48]–[49].

- (c) third, to take account of the distress, hurt and humiliation which the defendant's publication has caused.

### **Aggravated damages**

[646] Aggravated damages are claimed in addition to general damages, but are also compensatory in nature. Compensatory damages may be aggravated where it is satisfied that the defendant has acted towards the plaintiff in a manner which compounds or increases the effect of the original defamation.<sup>144</sup> They are awarded to compensate for injury to the plaintiff's feelings or dignity where that sense of injury has been exacerbated by the manner in which, or the motive with which, the defendant committed the defamatory act, or by how the defendant behaved towards the plaintiff, particularly after the defamation was committed.<sup>145</sup>

### **Punitive damages**

[647] Damages for defamation are normally compensatory only, but in exceptional cases an award of punitive damages may be made. Such damages are distinct from aggravated damages. Rather than compensate, their purpose is to punish. Section 28 of the Defamation Act provides that "in any proceedings for defamation, punitive damages may be awarded against a defendant only where that defendant has acted in flagrant disregard of the rights of the plaintiff."<sup>146</sup> As punitive damages awards are relatively rare, they are only justified where there is a need to punish the defendant beyond the award for general damages.

### **Discussion**

[648] The principal focus of Mr Craig's causes of action was on Publication 1, Mr Slater's interview on Newstalk ZB on 19 June 2015, two hours after Mr Craig announced that he was standing down as Leader of the Conservative Party. For completeness, I repeat the imputations alleged by Mr Craig. They were that he had:

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<sup>144</sup> *Siemer v Stiassny* [2011] 2 NZLR 361 (CA) at [51]-[56].

<sup>145</sup> At [51].

<sup>146</sup> Defamation Act 1992, s 28.

- (a) sexually harassed Ms MacGregor;
- (b) sent her numerous "dirty" sexually explicit text messages which were unsolicited and a form of sexual harassment;
- (c) sexually harassed Ms MacGregor so seriously that he settled her sexual harassment claim by paying her a large sum of money running into six figures; and
- (d) lied to the board of the Conservative Party by claiming that he had paid Ms MacGregor substantially less than six figures to settle her employment claims when in fact he paid her a six-figure sum to settle her sexual harassment claim.

[649] Mr Craig pleaded that those statements would cause damage to his reputation as a prominent businessman and leader of a political party with serious parliamentary aspirations. I accept that allegations that he had acted in the manner alleged would inevitably damage his reputation, particularly since the Conservative Party's 2011 and 2014 electoral campaigns were founded, in part, upon policies said to be consistent with Christian and family values. But because I have held the allegations about that behaviour to be true, the reputational damage suffered by Mr Craig leading to his political demise resulted not from any untrue statement by Mr Slater about those matters but from the fact that Mr Craig acted as he did. It is against that background that I must consider the effect on Mr Craig's reputation of the untrue statements that he had placed Ms MacGregor under financial pressure to sleep with him, and that he had sexually harassed at least one victim other than Ms MacGregor.

[650] I find that those allegations, while untrue and justifying an award of a remedy in defamation to Mr Craig, were largely subsumed so far as reputational impact is concerned by the damage caused by public awareness of:

- (a) Mr Craig's sexual harassment of Ms MacGregor;

- (b) his inferred acknowledgement of the merits of her allegations by making a financial settlement; and
- (c) his misleading the board and members of the public to avoid public disapproval and the disapproval of the Conservative Party in an attempt to salvage his political career.

[651] Moreover, I have held that the findings of the Human Rights Review Tribunal in December 2015 are relevant to an assessment of Mr Craig's reputation and the extent to which he is entitled to damages for defamation. The Tribunal held that Mr Craig had breached the settlement agreement with Ms MacGregor in a deliberate, systematic, egregious and repeated manner. It held that he released carefully selected information to paint himself as a person who had been falsely accused by a woman who was clearly incapable of managing her money and to make an inference that she was seeking money through the sexual harassment complaint. Those actions were found to be deliberate, sustained and calculated.

[652] It scarcely needs to be said, therefore, that the reputational damage which Mr Craig suffered throughout the events traversed at length in this judgment resulted almost entirely from his own actions. To the extent, if any, that his reputation suffered further damage as a result of the two statements for which I have held the defendants to be liable, I am more than satisfied that the declarations that he was defamed in that way provide adequate vindication.

[653] I conclude, therefore, that Mr Craig is not entitled to an award of general damages to compensate him further for such damage. It follows that his claims for aggravated and pecuniary damages fail and must be dismissed.

## **RESULT AND ORDERS**

[654] For the reasons given:

- (a) I declare under s 24 of the Defamation Act 1992 that Cameron Slater and Social Media Consultants Limited are liable to Colin Craig in defamation for the untrue statements that Mr Craig:

- (i) had placed Ms Rachel MacGregor under financial pressure to sleep with him; and
  - (ii) sexually harassed at least one victim other than Ms MacGregor.
- (b) I dismiss Mr Craig's remaining causes of action in defamation.
  - (c) I dismiss Mr Craig's claims for damages in defamation.
  - (d) I dismiss Mr Slater's causes of action in defamation against Mr Craig by way of counterclaim.

### **Costs**

[655] Rule 14.2 of the High Court Rules 2016 provides as a primary principle that a party who fails with respect to a proceeding should pay costs to the party who succeeds.<sup>147</sup> The rule also provides that an award of costs should reflect the complexity and significance of the proceeding.<sup>148</sup> Bearing in mind that each of the parties has both succeeded and failed in the proceeding in varying degrees, and having regard to the complexity and significance of the proceeding, it will be obvious that the determination of costs will require careful consideration by the parties and by the Court.

[656] Costs are reserved for the exchange of memoranda and will be determined on the papers unless the Court directs otherwise. It is desirable that a timetable should be provided for the filing of memoranda, but I invite the parties in the first instance to confer before I make any timetable directions. A joint memorandum as to a timetable or, in the event of there being no agreement, separate memoranda addressing a timetable, shall be filed and served no later than 5.00 pm, Friday, 23 November 2018.

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<sup>147</sup> High Court Rules 2016, r 14.2(1)(a).

<sup>148</sup> Rule 14.2(1)(b).



### **Ancillary orders**

[657] This case attracted considerable publicity and it is likely that there will be media and public interest in the Court's judgment. It is reasonable to give the parties and Ms MacGregor, all of whose reputations are affected, an opportunity to consider the judgment before it is publicly distributed. It is also fair to redact from the public version of this judgment the sums of money referred to at [144] concerning Ms MacGregor's financial position.

[658] I order, that:

- (a) Publication of this judgment other than to the persons named in paragraph (b) is prohibited until 11.00 am on Thursday, 25 October 2018.
- (b) The persons to whom this judgment may be published immediately are:
  - (i) Mr Colin Craig and Mrs Helen Craig;
  - (ii) Mr Cameron Slater and his wife or partner;
  - (iii) Mr Peter Belt or his wife or partner;
  - (iv) Counsel (including Mr Cleary) and the parties' legal advisors;  
and
  - (v) Ms Rachel MacGregor and her legal advisors.
- (c) To avoid doubt, the order in paragraph (a) prohibits the persons named in paragraph (b) from publishing the judgment or any part of it, including the result and orders, until 11.00 am on Thursday, 25 October 2018.

- (d) The sums of money referred to at [144] above –
- (i) shall not be published to any person other than the persons named in paragraph (b); and
  - (ii) shall be redacted from any copy of this judgment other than the original judgment and the copies provided to the persons named in paragraph (b).

**Acknowledgement**

[659] I regret that the delivery of this judgment was delayed by the time required to address adequately the breadth and complexity of the factual and legal issues arising in the proceeding, by the pressure of other judicial commitments and by the need to invite further submissions from time to time, after the completion of the hearing, to address matters arising during my deliberations. I am grateful to Mr Craig and his McKenzie Friend, Mr Cleary, and to Mr Henry and Ms Foster for the assistance I received from them during the hearing and through their written submissions.

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**Toogood J**